

BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

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In the Matter of:           : Docket No.:

PUBLIC & TRIBAL FORUMS on   : RM02-16-000

HYDROPOWER LICENSING       :

REGULATIONS               :

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Sheraton Grand Hotel

1230 J Street

Carr Room

Sacramento, California

Wednesday, November 20, 2002

The above-entitled matter came on pursuant to notice at

9:10 a.m.

BEFORE:

RICHARD L. MILES

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Federal Energy Regulatory Commission

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APPEARANCES (CONTINUED):

FOR THE COMMISSION:

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KEN HOGAN, Hydro Licensing

TIMOTHY J. WELCH, Division of Environmental and  
Engineering Review

ANN MILES, Licensing Group

FOR THE TRIBES:

ART ANGLE, Enterprise Rancheria

CLIFFORD ANGLE, Enterprise Rancheria

LEORA BEIHN, North Fork Rancheria

PATRICK BEIHN, North Fork Rancheria, Tribal Counsel

DANIEL CARDENAS, Pit River Tribal Counsel, Hammawi Tribe

DEBBIE EDWARDS, Mooretown Rancheria

CATHY MESSERSCHMITT, North Fork Rancheria

ALSO PRESENT:

MEL BERG, Department of the Interior, Bureau of  
Land Management

JIM CANADAY, State of California, Water Resources  
Control Board

BOB DACH, Department of the Interior, U.S. Fish and  
Wildlife Service

APPEARANCES (CONTINUED):

TOM DANG, Department of the Interior, Bureau of  
Indian Affairs

DOUGLAS GARCIA, Department of the Interior, Bureau of  
Indian Affairs, Central California Agency

MONA JANOPAUL, Department of Agriculture, U.S.  
Forest Service

BRETT JOSEPH, National Oceanic and Atmospheric  
Administration, National Marine Fishery Service,  
Department of Commerce

CHUCK LINDERMAN, Edison Electric Institute

JIM McKINNEY, California Resources Agency

KERRY O'HARA, Department of the Interior,  
Solicitor's Office

MALKA PATTISON, Department of the Interior, Bureau  
of Indian Affairs, Secretary's Office of Policy Analysis

GEOFFREY L. RABONE, Southern California Edison

ANGELA RISDON, Pacific Gas & Electric Company

DENNIS SMITH, Department of Agriculture, U.S.  
Forest Service

GLORIA SMITH, Department of the Interior, Solicitor's  
Office

ALAN SONEDA, Pacific Gas & Electric Company

JULIE TUPPER, Department of Agriculture, U.S. Forest  
Service

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## P R O C E E D I N G S

(9:10 a.m.)

MODERATOR MILES: Why don't we go ahead and get started? Can you all hear me okay back there?

On behalf of the Federal Energy Regulatory Commission, the Department of Commerce, Agriculture, and Interior, thank you for joining us in this forum today.

What we'd like to do is to make a short presentation. And I will go over today's agenda, and ask you if that's an okay agenda for the guests that we have here today. And following my presentation, Tim will go through and make a presentation to give you some background information.

So what I'd like to do first is maybe what we can do is just go around the room and have people introduce themselves, state your name for the reporter. And if you could spell it out, the first time, that would be very helpful. And then following that, I'll begin my part of the presentation.

My name is Richard Miles. I work at the Federal Energy Regulatory Commission. And I am within a unit at the Commission that is dedicated to Alternative Dispute Resolution only. And I've been asked today to help moderate and facilitate this conference.

And with me today is John Blair from the Office

of Energy Projects, and Ken Hogan -- where's Ken -- oh, there he is -- who will also help facilitate this forum today. And so with that why don't we just start, to my left.

John, do you want to go first?

MR. BLAIR: John Blair, Federal Energy Regulatory Commission; I do licensing in the western part of the United States.

MR. DACH: I'm Bob Dach of the U.S. Fish and Wildlife Service. I'll talk a little bit more later on about the Interagency Hydro Power Commission Proposal.

MS. SMITH: Gloria Smith, Interior Solicitors Office.

MS. O'HARA: Kerry O'Hara, K-e-r-r-y O-'H-a-r-a. I'm with the Department of Interior Solicitors Office, in Sacramento.

MS. BEIHN: I am Lu Beihn, B-e-i-h-n, last name, from North Fork Rancheria. And I also represent the Native American Communities for the SCE relicensing.

MS. MESSERSCHMITT: I'm sorry. And my name is Cathy Messerschmitt, spelled M-e-s-s-e-r-s-c-h-m-i-t-t. I am from North Fork.

MR. RABONE: I'm Geoff Rabone, that's Geoff, with a G, G-e-o-f-f-r-e-y, Rabone, R-a-b-o-n-e. I'm with Southern California Edison. I'm a project manager for

hydro relicensing.

MR. HOGAN: Ken Hogan. I'm with the Federal Energy Regulatory Commission. And I do hydro relicensing.

MS. JANOPAUL: Good morning. Mona Janopaul with the Forest Service, out of Washington, D.C. That's J-a-n-o-p-a-u-l. Thank you.

MR. DANG: Good morning. My name is Tom Dang, D-a-n-g, and I'm with the Bureau of Indian Affairs, in Sacramento.

MR. CARDENAS: Daniel Cardenas, C-a-r-d-e-n-a-s. I'm with the Pit River Tribe, a Member of the Pit River Tribal Council, for the Hammawi Band.

MS. MILES: Ann Miles, no "e" on Ann. I'm with the Federal Energy Regulatory Commission in Washington, the group that does licensing.

MR. CANADAY: Jim Canaday, State Water Resources Control Board. I'm the California State FERC Licensing Coordinator.

MR. McKINNEY: Jim McKinney, on behalf of the California Resources Agency. And Jim and I are part of the California Interagency Hydropower Team.

MR. JOSEPH: I'm Brett Joseph. I'm with the National Oceanic and Atmospheric Administration here on behalf of the National Marine Fishery Service. I'm a part of the Department of Commerce. I'm based in D.C.

MR. WELCH: Tim Welch, Federal Energy Regulatory Commission. Like John, I handle relicensings in the western part of the country. And I'm going to be giving a little presentation about why we're here in a few minutes.

MS. PATTISON: Hi. Malka, M-a-l-k-a, Pattison, P-a-t-t-i-s-o-n. If I look familiar to do you all, I've switched hats in midstream of this process. Started out working as the BIA, Bureau of Indian Affairs Hydro Power Coordinator. And now I'm in the Secretary's Office of Policy Analysis, where Indian Trust issues are still of key importance.

MR. BERG: Mel Berg, Bureau of Land Management, Washington, D.C. I'm Hydropower Coordinator with the BLM.

MODERATOR MILES: Thank you, Mel.

MR. GARCIA: Good morning. Douglas Garcia, Natural Resource Officer, Bureau of Indian Affairs, Central California Agency. We represent about 54 tribes in California.

MR. LINDERMAN: Chuck Linderman, Director of Energy Supply Policy, the Edison Electric Institute in Washington. That's L-i-n-d-e-r-m-a-n.

MS. RISDON: Angela Risdon, R-i-s-d-o-n, from Pacific Gas and Electric Company.

MR. SONEDA: I'm also from Pacific Gas and Electric Company. My name is a Alan Soneda, S-o-n-e-d-a.



I will be speaking a little later today as a member of the National Review Group.

MR. BEIHN: And good morning. Last but not least, hopefully, Patrick Beihn from the North Fork Mona Rancheria. I sit on Tribal Council as a Tribal Vicechair.

MODERATOR MILES: Thank you all.

Okay. Then why don't we at this time start with the slide presentation. Just to give you some background, this is a federal agency cosponsorship process. And under the Federal Power Act the FERC is responsible for a licensing nonfederal hydropower projects. The Departments of Agriculture, Commerce, and Interior are responsible for providing conditions and the prescriptions as part of any license issued.

And to give you a chronology of the events that have occurred so far, and what will occur in the future, on September 12th of 2002, this year, a notice of public and tribal forums were announced. And to date we've had forums held in Milwaukee, Wisconsin; Atlanta, Georgia; Washington, D.C.; and Bedford, New Hampshire. And today we are in Sacramento. And tomorrow and Friday we will be holding forms in Tacoma, Washington.

Now comments on the proposal on what a new license, or whether or not there should be a new license, process are due December 6, 2002. And Jim will get into

that in some more detail. And on December in 2002 there will be stakeholder drafting sessions. In February the Commission hopes to put out a NOPR, a notice of a proposed rulemaking. In March there will be a series of technical conferences.

And for your convenience, for those that are here today that haven't seen this before, on the back of the book, the blue book that we had out front, you'll see a summary of all the steps that will be taken. It's a good overview of the events that have occurred and will occur in the future. And as you can see, there will be some technical conferences which will be comparable to the ones that we are holding today.

And then following the technical conferences in April of 2003 there will be another stakeholder drafting session. And the Commission hopes to issue a final rule in July of 2003.

And what we hope to achieve today is to explain why we're here. Tim will address that in his slide presentations. And then we will have a presentation on the Interagency Hydro Committee Proposal. And that will be given, as Bob indicated, by him.

And then the National Review Group Proposal will be presented. And, Alan, will you be making that presentation?

And then we have a new proposal that was announced yesterday by the State of California. And Jim will be making that presentation.

MR. McKINNEY: Both Jims.

MODERATOR MILES: Both Jims, okay. I figured if I said Jim I couldn't go wrong.

(Laughter.)

MODERATOR MILES: Okay. And then what we hope to do is to hear from the representatives from the different tribes as to their thoughts, based on what you've heard and what you would like the Commission to hear and the other federal agencies to hear.

And then following those presentations we hope to have an interactive discussion. We have listed some topics that you might want to discuss with us. You may, based on the presentations that you hear this morning, wish to discuss other topics. Or you may have brought your own topics with you that you would like to discuss with us as to what a new rule should look like.

Given the size of the audience it's possible we might be able to complete this before lunch. But if we don't, we'll take a break for lunch and then continue the discussion after lunch.

And following the presentations of the Interagency and National Review Group and the State of

California, we'll probably take about a 15-minute break before we hear from the guests and begin that discourse, that discussion among the participants. That's our proposed agenda.

Is that okay with the audience here today? Are there any changes you would like to see today in the agenda?

Okay. Then with that, I'm going to turn it over to Tim.

MR. WELCH: Ken, your timing is poor here.

(Laughter.)

MR. WELCH: Thank you. Thanks, Rick.

Thanks, Rick.

MODERATOR MILES: It goes straight into her machine. It is solely for the court reporter. You still have to project.

MR. WELCH: I like to hear myself. I like to be the lounge singer thing, you know.

Yes, thanks, Rick. Once again, on behalf of the Federal Energy Regulatory Commission, I'd like to welcome our guests here today. And what I'm going to be talking about is basically, number one, why we're here and also how we got here. So I'd just like to start off by saying back in -- to give you a little history, back in 1991 the Federal Energy Regulatory Commission received about 157

relicense applications for various projects throughout the country. And they all came in a pretty short period of time.

Unfortunately, the Commission was unable to issue licenses within the two-year period for most of those projects before those licenses expired. So most of them had to go on annual licenses. And there's a lot of myriad of reasons for why that happened. And I'm not going to go into all those reasons today. But it raised a lot of questions about what we call the traditional licensing process, about why it takes so long to get a hydropower license.

Many of those projects that I just mentioned, that we received the applications back in 1991, many of them are still pending before the Commission even today, over 10 years later.

So, as I said, it sort of raised some questions about the traditional process. And people started thinking about how we can make that process a little bit more efficient. So one of the first things that we tried was we tried some administrative reform efforts. Now these are things that weren't quite a rulemaking, but they were things that some kind of quick fixes.

How can we work better with some of the other federal agencies that are involved in the Federal Power

Act? And also, how can we work better with our applicants?

So one of the first ideas was to form what was called the Interagency Task Force, the ITF. And that was a series of -- a consortium of Federal Energy Regulatory Commission staff and staff from Departments of Interior, Commerce, Agriculture, and the EPA. And we formed this task force, once again, to try to implement some administrative reforms to make the process a little bit more efficient.

Now the results of the ITF's efforts were a series of seven reports dealing with all different aspects of the hydro licensing process from Endangered Species Act consultation to how FERC does its noticing, to how FERC does its NEPA documents. And there were a number of reforms put in place that really helped gain some efficiencies by at least allowing the federal agencies to understand and communicate with each other a little bit better.

Now there was also a parallel process begun by members of the industry which got together with some conservation organizations and the federal agencies as well under the umbrella of the Electric Power Research Institute, EPRI. And they formed what's called the NRG, the National Review Group. And they also produced a series of reports about how to make the traditional hydro

licensing process better. And they came up with reports that are called best practices to help future applicants get through the process in a more efficient manner.

Now the Commission itself back in December of 2001 convened what was called the Hydroelectric Licensing Status Workshop. And that was something that the Commission wanted to do to look at cases that had been in front of FERC for five years or more. And our Chairman, Pat Wood, wanted to examine the reasons why they had been pending in front of the Commission for so long. And one of the things that came out of that status workshop were a lot of the projects had not yet received a water quality certificate, under the Clean Water Act, by some of the states.

So to delve into that subject a little bit deeper we scheduled a series of regional workshops, our next bullet there, to talk to some of the states. And we had one here in Sacramento last spring. We also went to New Hampshire in the Southeast, and in the Northwest, as well. And I'm going to talk a little bit more, in the next slide, about what we heard from the states.

Finally the resource agencies themselves, most notably Interior and Commerce, they had some reforms of their own. And those two agencies developed a process very similar to the Forest Service's 4e's appeals process,

called the MRCP, the Mandatory Condition Review Process. And what that did was subjected those agencies' mandatory licensing conditions to public comment. So that was another administrative reform effort that was done outside of FERC.

So back to those regional state workshops. What do we hear from the states? Well, the biggest thing that we heard, our second bullet there, was the states felt that if they had more complete hydro license applications, they could issue the 401 Water Quality Certificate in a more efficient manner. Because you see that the many of the states use the federal hydro license application as the application as the application for the 401 Water Quality Certificate.

And what the states found were a lot of times they felt that there wasn't complete enough information for them to process the Water Quality Certificate. Studies hadn't been done and the proper water quality information wasn't included in the license.

So we asked the states: Well, how would you design the process such that it would ensure a higher probability of a more complete license application?

And what we heard were the next four bullets:

Early identification of issues through NEPA scoping. That is, NEPA scoping earlier in the process,



before the license application is filed, rather than after.

Early resolving a study disputes. A lot of times there's a dispute between the applicant and the state agency about what studies are actually necessary for the license application. And the states wanted a mechanism to resolve those study disputes earlier rather than later.

Early establishment of a licensing schedule. The states wish that FERC could sort of lay out the schedule so that everyone, all the stakeholders in the process knew from the very beginning what was expected of them and what was going to be happening.

And, finally, the states felt that the notice of intent, which is the first time the applicant publicly announces that they are going to file a relicense application, the notice of intent and initial consultation package should be filed at the same time.

So those are some of the things that we heard from the states. And keep those points in mind later on when you hear some of these proposals from the Interagency Hydropower Committee, the NRG, and also the California Proposal. And keep in mind these points when you're listening to them to try to see how those proposals address those points.

Well, the administrative reforms that I just mentioned, as I said, I think they went a long way to at

least improve the communications and efficiency in communication between FERC and the federal agencies. But the thought at FERC is that it was not enough. So we're taking the next step.

We're going on a new journey of regulatory reform. We're actually going to look at the regulations under the traditional hydro licensing process and look to see if improvements to the current regulations are needed to reduce the time and costs of licensing while continuing to provide for environmental protection and to ensure that FERC continues to fulfill its state and federal statutory Indian Trust responsibilities. And that doesn't apply just to FERC, but to all the agencies that participate in the licensing process.

Now this is very consistent with the National Energy Policy for the country. And that policy calls for a better and more efficient hydroelectric licensing process.

So we kicked this whole thing off back on September 12th, a couple of months ago. And we issued a notice basically to provide opportunities for discussions from the public and the tribes through these various forums throughout the country that Rick mentioned a little bit earlier. The notice also established some procedures for filing written comments with FERC and recommendations on the need and structure for a new hydro licensing process.

And, as Rick mentioned, those comments are due December 6th.

The notice also include two attachments. The first attachment was a proposal by the Interagency Hydropower Committee, the IHC, which was a successor of the Interagency Task Force.

The notice also include an attachment, i.e. proposal for a new licensing process from the National Review Group, the NRG, that I had mentioned earlier, that also had come up with its own proposal for a new process.

The notice also outlined a series of nine questions, and those questions are in your blue book. They begin at the bottom of page C-7, and the remaining eight are on page C-8 of your program. And these nine questions were put in there so that we could let you know the kinds of information that we were looking for in the development of a new licensing process. And if you look at Question Number 8, we specifically asked about tribal roles and responsibilities, how best can a new licensing process accommodate the authorities, roles, and concerns of Indian tribes.

So the goals for today's forum, even though you'll hear a bunch of us up here giving proposals for the next hour or so, the primary goal for today's forum is to listen to you, your ideas about the licensing process. We

want to hear about the traditional process, what about it works for you, what about it doesn't work for you.

And then we'd like you to identify some specific problems in the current regulations and discuss some possible solutions that will seek to address some of these problems to make the process work better for the tribes.

And then we'd like to hopefully translate some of those solutions into concepts that will actually be part of FERC's notice of proposed rulemaking that we are going to be issuing in February.

So these are some of the discussion topics. This is not an all-inclusive list. These are just some bullets that were formed based on the nine questions in the notice. We don't to have to stick to this. We're willing to discuss anything associated with the process that you all would like to discuss with us. So look at those bullets here.

We want to talk about the integrated licensing process. You're going to hear three proposals today about an integrated licensing process. We could talk about study development, how studies are developed in the process. You'll hear some proposals about how study disputes should be resolved. Also like to hear your thoughts about settlements, time periods in the IHC proposal. There are time periods in between boxes. Our those time periods too

short, are they too long.

And I guess most importantly, especially with this forum, we'd most like to hear your thoughts about how we can best coordinate state, federal, tribal, and FERC processes. We all have our own processes that we have to deal with, whether we are from a federal agency or a tribal. How can we mesh those together in the most efficient manner to create a process that works for everybody?

And the last bullet, it's more of a global issue, is if we do come up with a new licensing process, what's the relationship between a new process and the existing processes, i.e. the traditional process and the alternative licensing process, the ALP. Should a new process replace both of those, or should it just be simply added so there will be three processes, or should be two.

So those are the types of things that we are looking for. But, as I said, we are here to listen to you and to hear what your thoughts are on the current process and on a new process.

MODERATOR MILES: Okay. At this time Bob Dach from the Department of Interior of Fish and Wildlife Service --

MR. DACH: Thanks.

MODERATOR MILES: -- will make the presentation

on the Interagency Hydropower Proposal.

MR. DACH: Thank you. Tim got into the Interagency Hydro Power Committee a little bit. I'm going to get into it just a little bit more.

(Comments off the record regarding the slide system.)

Mr. DACH: So I'm going to go -- this is what I am going to do. I'm going to go over the IHC. I'm going to talk a little bit about the objectives of the IHC proposal. I'm going to get into the proposal in a little bit of detail, but not a lot of detail, because it's in the book. And then I'll just tell you sort of some of the benefits that we at least had anticipated from it.

The Interagency Hydropower Committee, as Tim was saying, is sort of the offshoot of Interagency Task Force. It was a staff-level effort corrected by some of our higher-ups; the Commission and Ag and Commerce and Interior sat down with EPA and CEQ and the Council on Historic Preservation and sort of started with a clean slate. Figured, you know, what do we need to do in order to make this process work for everybody.

We concentrated specifically, of course, on our needs because we knew them best. We did have the benefit of comments that we had received in other forums. So we weren't completely blind to the other issues that were out

there. But we knew when we got it to a certain point we were going to have to farm it out and make sure that all the other interested parties could help us sort of tweak it a little bit to fit their needs.

What we had done I think is what everybody had done first was try to do one NEPA effort. Because under the traditional and under the alternative, of course the first thing that you know is you end up doing two NEPA products. The license applicant puts a lot of time and effort into it and then FERC comes back and almost repeats the effort.

So the big-time saving that we saw, and a way to improve coordination and to resolve a lot of the conflicts up front, was of course to move that up front and do it all at once and all at the same time which, in essence, we're hoping took us through the first three bullets up there.

Our goal was to reduce the overall time and cost in the process. So you'll see that we stuck to -- and we stuck to five and a half years, but our thought process was that we can get it done in that amount of time and there's no subsequent rehearing or litigation. And that was a benefit. I think right now the average license is about seven years or something along those lines.

So I'm going to present the proposal. This is it. I know you can't see it, but I'm just going to put it

up here because it makes me feel comfortable. I don't ever like to get too far from my proposal.

But it's Attachment A, I think you guys have it.

It's Attachment A, page 14. It's this exact same thing.

We don't have a pointer, do we?

Yeah, there's a new page number since -- I haven't gotten the updated version. No pointer, so I'll use my finger. It's even kind of blurry. There we go.

MR. [SPEAKER]: Back here it's really blurry.

MR. DACH: Excellence. Ah, there it is. There's my pointer.

So I'm going to -- I have it broken down into four parts. And those four parts are basically going to take us through this maze. And I have -- it's broken in these four parts mostly, I think, because that's what we could fit on individual Powerpoint slides, for more than anything else. So I'm going to run through the whole thing here relatively quickly. I'll put a bunch of this stuff up here first.

The first thing that we did -- if you see your box, we call it box zero. I don't remember if we actually "box zero" on it, but it's this first sort of box up here. This was the stage in the process where we're thinking, you know, we need to get people thinking about it. We need to have them thinking about the kind of information that



they're going to need in order to complete the licensing process.

So the idea was that the Commission would send out a letter about three years before the actual process starts. And in that letter would have a lot of information on the types of things that you can expect to undergo during a licensing process. The idea was to help the applicant sort of acquire all the available information, develop the stakeholder list, put it all together, so when he comes to the table in this box 1, that he will have a pretty well described prescoping document.

We developed what we called the prescoping document which would replace the initial consultation package that the applicant currently puts together. And the idea behind the prescoping document, of course, is to make it reflect the NEPA process that's going to be initiated right off the bat, instead of the ICD and that whole pre-application process and then going into the NEPA.

So at five and a half, five -- between five, five and a half years in advance this box, right here, the applicant provides his prescoping document to everybody. The Commission looks at it, distributes it. And that's the first opportunity that folks have to comment on it. From there, basically through this process here, is the scoping process. So the overall process that we had in mind was

we'd scope the project, we'd agree to studies, we'd conduct the studies, we'd get the application. FERC would write a NEPA document. Then we'd get a license. So that's the order that we have it in. And that's what these steps represent, so the various junctures along the way.

The result of this eight-and-a-half-month period here through box 8 is a scoping document one, that of course the Commission will put out, and a final study plan, which the intent was that all of the stakeholders would collaborate on this process and produce a final study plan. So before we actually conducted any of the studies that were necessary, based on those issues that were scoped, we would have agreement amongst the parties. And then we could go right in, we could do the studies as detailed and described in the study plan, and then hopefully we wouldn't have any disagreements that's festered until late in the process.

I have the -- the study of this dispute resolution process is up here next, only because that's where it falls in the flowchart. We're hoping that this isn't used. We're hoping that that eight and a half months of collaboration would produce a study plan that all the stakeholders could buy into. If however there was one study, or two studies, or however many studies, that folks just couldn't come to terms with, and specifically for the

federal agencies that had mandatory conditioning authority, we sort of put ourselves into a different place for this purpose. Because the idea was we had to have certain information in order to fulfill our obligations under the Federal Power Act.

So we wanted to make sure that we had an opportunity to tell the Commission that before they decided that a study didn't need to occur. So after the final study plan is developed, if there was a study that was not included, or not included the way one of the mandatory conditioning agencies thought it needed to be done, then they could elevate it to a dispute resolution process.

The dispute resolution process then we set up would be short. And it would be focused on, in essence, just two issues: Whether or not, you know, the need for the study was justified by the agency requesting it, and then whether or not the study had met the series of criteria. So it would be put on the table. There would be a sort of this panel, this team of three. One person from the requesting agency, one person from the Commission staff, and then a third party that everybody could agree to.

And the idea that these folks are technical experts. They're not the ones that have been sitting at the table arguing back and forth. And their job is to sit

down and just objectively look at the criteria and the study request and determine whether or not it needs to be done, or whether or not it doesn't need to be done.

As a result of that decision, they produce a set of findings with, you know, with basically what they say needs to happen. And it goes to the Commission and then the Commission uses that to decide whether or not, in light of that information, they're going to request a study or they're going to not request a study. That whole process happens within 60 days. The idea is once the decision is made by the Commission, then the decision is made, and we move forward with the studies.

All of this, by the way, is captured then after -- after the dispute resolution process, everything is captured in scoping document number two, along with the final study plan. And we're looking at scoping document two and the final study plan at that point as sort of the roadmap for the rest of the study period, for the most part.

The study period itself, we had anticipated two seasons. That's not to say it could be more or could be less. It all depends on how the issues were scoped and then how the studies were designed based on that scoping effort. But because we wanted to have folks being able to anticipate how long this process was going to take, we said

on average we're probably expecting a two-year study window. So that's what's up there.

After each year annually all of the parties would sit down and go over the information that was collected from that year and decide whether or not everything is progressing as it needs to, or something needs to change. And then, as a result of that -- and of course dispute resolution is available there, too. But as a result of that, we'd move into the second year of studies and conduct of those.

After the second year of studies we worked in a decisionmaking point. It's box 13, I believe. And basically what it is, is it's when everybody sits back down at the table and says, okay, do we have enough information that we can now continue in this process. Do we have enough information for our decisions, does FERC have enough for their decisions. And based on the outcome of that meeting then we go ahead and continue to move forward through the rest of the process, which -- and again the next step is the draft application.

The point -- I think I didn't quite make it clearly yesterday, but the draft application -- we're trying to do everything with this whole NEPA concept in mind so the prescoping document looks like a scoping document that you'd find under NEPA that the Commission

would do. The environmental section, now the draft application, would look like what the Commission's NEPA document is going to look like, at least the environmental section of it. So the idea is to sort of try to get, you know, everybody going in the same direction at the same time, which we hope will reduce sort of confusion and delay.

This is pretty much the same. At that point the Commission requests intervention, comments and recommendations, and conditions. What I do want to point out here is we have the formal proceedings starting at box 1. So as soon as -- 1 or 2 -- but as soon as the Commission releases the application or the prescoping documents, then in essence that's the beginning of the Commission proceeding.

At this point, box -- what it -- was it 14? 14 or 17, one of them. Anyway, when they request interventions, then it's come up a couple times.

MR. JOSEPH: 18.

MR. DACH: 18? When they request interventions that's about the time when the whole ex parte thing would kick in. So you have that whole pre-period were communication isn't a problem at all, and hopefully we can work out all of the differences.

At that point we have two choices on how to

finish up the process. And it comes down to whether or not there's going to be a draft NEPA document. If there is going to be a draft NEPA document, whether it be an EA or an EIS, then we have our track A, which is right here. And if there's not going to be a draft NEPA document then we have a track B.

We anticipate that for the most part we would be in track A with a draft NEPA document. I think everybody recognizes the need for a draft. The track B without the draft were for those other situations where it just doesn't make sense to go to the extra effort. Then we do recognize that that happens on occasions, as well.

So in track A with the draft, you have the agency mandatory conditions, they come up. It follows a process similar to the mandatory conditions review process now. Then we get the final NEPA the document and the license. If we don't have the draft document down in track B, you get the EA. The Agency mandatory conditions still go through their process. Once they're finalized, then the license comes out.

So that should take you through that chart. It's actually not nearly as complicated as it looks. Everybody hates this thing. But like I said, I like to stay close to it.

What we look at is benefits where of course we

get the one NEPA document. It's done upfront. The scoping is done first. We agree on studies. So we're hoping to eliminate a lot of the duplication and a lot of the arguments and the disagreements.

We have the early identification involvement of stakeholders because, you know, FERC is now doing this as their NEPA product. They'll ensure that the effort is made to get everybody on board, or at least identify all the stakeholders.

MS. MESSERSCHMITT: Before you go on --

MR. DACH: Or -- pardon me?

MS. MESSERSCHMITT: Before you go on I'm afraid to that we're going to miss being able to comment on this. You're saying that FERC will decide whether all the stakeholders are brought to the table and who is brought to the table? Is that what you just said?

MR. DACH: I don't -- maybe "decide" might not have been the right word, if I used that.

MS. MESSERSCHMITT: Well, I'm just hearing a "trust me" phrase. And that's what makes me a little nervous.

MR. DACH: We can talk a little bit more about exactly how we're going to ensure that all the stakeholders are there.

MS. MESSERSCHMITT: Okay.



MR. DACH: The idea in box zero was the identification to the licensed applicant of all these things that are going to be need to be done and sort of who we know they're going to have to contact. We're hoping that the applicant does some of that work and develops the stakeholder list as well.

And then when we get into the next phase of the process, then of course we have the -- I want to say the continued development of the stakeholder list. But I don't know, at least in this process, that we've gone into any great detail to explain how that would be done.

MS. MESSERSCHMITT: Yeah, that's why I asked you.

MR. DACH: So if there was, as you're making your comments, and there were, you know, "you need to do this in order to ensure that we're there" type stuff, that would be ideal, because we just haven't gone to that level of detail with that particular step in the process.

We do have set timeframes. And I keep -- they sort of shine over that when I do this presentation. But between the way that we envision the process to keep moving is with these kind of rigid steps. And at each step, you know, you know you've got 30 days, you've got 45 days, you have 60 days, or whatever. But the process keep moving forward.

We also have under this proposal Ag and Commerce

and Interior would make sure that all of their mandatory conditions were filed at the same time, so everybody saw those at the same time. And then on the whole process itself we're hoping certainly that the development of this information would then support any settlement discussions that the parties wanted to have when it came time for that.

We can -- I don't know if we want to clarify some stuff now for you or if we want to wait.

MODERATOR MILES: Yeah. Well, what we've done in the past is following the presentation of the three proposals, we then give the audience an opportunity to ask clarifying questions. Because I have all three proposals presented to them and we thought that that would be a good time. That way you can -- you may want to add some clarifying questions about how the different proposals differ from each other.

MS. MESSERSCHMITT: It's a lot of information to try to rewind, is my point.

MODERATOR MILES: Um-hum.

MR. BLAIR: Do the questions now.

MR. WELCH: You could probably go one at a time.

MODERATOR MILES: We can do that. I mean we're flexible. It's your meeting and so we're here to accommodate your needs, your interest.

Do you want to ask questions now? How would you

-- your choice. Or do you just want to continue the --

MR. DACH: I'd like to field questions now.

MODERATOR MILES: It's up to you.

MS. MESSERSCHMITT: I just think that in order to eat an elephant, you know you've heard that, eating an elephant, you start bit by bit, --

MR. DACH: Uh-huh.

MS. MESSERSCHMITT: -- rather than trying to eat the whole thing at once.

MR. DACH: I'm looking.

MS. MESSERSCHMITT: And see -- when I was trying to explain FERC's proposals to Tribal Council, the thing's like this. And the part that I was trying to synopsise into one page was like this. And as we're going through here I just think it'd be easier if there is a concern to jump in and say, could you answer this question. That was my only point.

MODERATOR MILES: Okay, that would be fine.

MR. DACH: Then I -- yeah, I'm with you.

MODERATOR MILES: Yeah, Brett?

MR. JOSEPH: I'd like to may be clarify one thing right at the outset about, you know, mention kind of what the context in which the IHC Proposal fits in.

Based on some discussions yesterday with people it is apparent that there was some confusion regarding

whether this was a final proposal or one that is still in evolution that will be, you know, continuing to tweak and change. In fact, at this point the proposal -- the IHC proposal that Bob just went through, it's not going to change as a proposal. It's something that is -- you know, was attached to the Federal Register, noticed, it's something that we're asking people to look at, consider, draw on. But any -- you know, any further ideas as to kinds of things that we're hoping to get through this process will be going into FERC rulemaking, not into further refinements to the proposal itself.

I just wanted to make that clear.

MODERATOR MILES: Okay. Any other questions of Bob?

MS. MESSERSCHMITT: Can you explain to me the timeframes? Because I'm looking at the timeframe for public comment in your first stage. Now you were saying that you saw that as a three month there -- I'm sorry -- three years before the notice of intent, right? That's before anybody does anything, FERC sends a notice of intent to the applicant three years before, right?

MR. DACH: Well, it's not really -- it's not a notice of intent. It's more of an informational document.

MS. MESSERSCHMITT: Before the NOI. Before that FERC will send one three years prior or to --

MR. DACH: Yes.

MS. MESSERSCHMITT: -- the applicant --

MR. DACH: Yes.

MS. MESSERSCHMITT: -- sending his notice of it?

MR. DACH: Yes.

MS. MESSERSCHMITT: Okay. After that what kind of timeframe are you looking at? Because I've been seeing 15 days, 60 days, 45 days, and so and so forth.

Would it progressively go, you have 15 days, boom, then 45 days, and then the next one? Because when you were talking about this process steamrolling along, you're going to run over some people, I think. That usually what steamrollers do. So I'm trying to figure out what kind of timeframes you're looking at for people to be able to get input.

MR. DACH: The way that we have the proposal developed right now is it does kind of steamroll along. And I'm not saying that that's a good thing or a bad thing. It's just kind of the way that we developed it.

So if you look on that chart starting with box 1, there are dates between every step of that, and at days. And those are the days that this proposal anticipates occurring between steps. So wherever there's public comment I think we allowed 30 or 45 days.

MS. MESSERSCHMITT: Forty-five and 30.

MR. DACH: Yeah.

MS. MESSERSCHMITT: I think it's 75 days total.

MR. DACH: Yeah.

MS. MESSERSCHMITT: But out of how many days? I mean you add to those all up and then you get a year or two; is that --

MR. DACH: What we had done --

MS. MESSERSCHMITT: -- is that --

MR. DACH: -- there are a couple of hard and fast days, the filing the application two years before the license was due was a hard and fast day.

MS. MESSERSCHMITT: Uh-huh.

MR. DACH: The five to five and a half years in advance of the application expiration date, or the license expiration -- I'm sorry -- was a hard and fast date. We knew what steps we needed to have in between there. And we kind of went through and said, from our perspective, how much time do we need for each one of these steps to fit inside of that window.

MS. MESSERSCHMITT: Um-hum.

MR. DACH: And that's what you come up with.

MS. MESSERSCHMITT: Okay.

MR. DACH: So there are some -- you know, you only have -- you have a set amount of time. You have to decide -- you know, every step needs a certain amount of

time for those steps that require a public comment, for example, or input to the Commission. We're going to have to give those a little bit more time. But under the constraints that we placed upon ourselves those timeframes are pretty specific. And some folks, we've heard that they are short.

MS. MESSERSCHMITT: Yeah, they are short.

MR. DACH: And those are the sorts of comments that, you know, we need. And more than just us need to hear because we've had -- we've been hearing loud and clear for a long time that the process takes too long. And we've done our best to try to make it take not quite as long and we're still kind of scratching our heads. We know it's a long complicated process. And we're telling our folks this is the best we can do with respect to that time period.

What we need now is to hear from other folks whether or not they think that's realistic. And if it's not realistic then those of the kind of comments that we can say, you know, we went all across the United States and we pretty much heard unanimously that's going to take longer. Or it's not going to take -- this is fine. You know, whatever the comments are. We just need to have that information in order to move forward.

MODERATOR MILES: Dan?

MR. DACH: Yeah.

MR. CARDENAS: It will -- I'll probably wait for my comments to make it, but when I look at these documents, though, what's lacking is the tribes. It's not necessarily the comments and the ability to make comments at these meetings, but the lack of a proposal from a tribal point of view.

I see all the agencies are covered and the utilities are covered, but the tribes are missing. And so I think that's part of the confusion that she talks about it, is we're seeing this for the first time. And maybe it would have been better had we been part of the process, so then it would be as confusing for us.

And so I see like three proposals. Maybe there should be a tribal proposal, too. I mean the State's in there and the utilities and the feds are there, but not to the tribes. So -- and a longer -- and sometimes it is better because these licenses are 50 years.

And so if we're going to shorten the process then maybe we should shorten the license down to a smaller time, because if we -- if, you know, you're saying that this process is going to be quicker and faster, but then the license is still going to be 50 years, well, then to me that doesn't make any sense. And so we as tribes don't have the administration that the utilities have. I mean they hire people that just deal with this one project. And



that's their whole job, is to know the deadlines, get everything done. While us, as tribes, have all kinds of things on our plate, not just that one project.

And so I know, like you said, that we're going to be steamrolled over. We're going to miss deadlines and, you know, because we have lots of things on our plates. The utilities have the money and the power to dedicate just to that one person to do those kinds of things.

And so the question I had was, at the beginning it was said that the process was -- this process was initiated because it's going to be cheaper. And it wasn't necessary said who, cheaper for who, on the FERC or the power companies. And it probably looks like it's a process that's cheaper for the power companies.

Power companies aren't going to be paying that, the ratepayers pay. You know, they submit a bill, but millions of dollars it costs them to do these. But we, the ratepayers, ultimately pay, not them. So not their shareholders.

And so -- and then the question about a dispute resolution was -- it sounds to me it's not binding, because it seems to me that this little committee makes a decision, and then it goes to FERC anyways to decide whether or not they are going to follow what they do, what they say. So maybe if we had a more binding dispute resolution or

arbitration, or something like that in place.

And, again, it's the stakeholders. Tribes should be mandated, that it should be written in there somewhere that these utilities have to -- any new project that's associated with a tribe, there's going to be a tribal associated in any project whether the tribe exists anymore or not, but there's going to be a tribe, especially in California. So all the projects in California are associated with tribes, so it's easy just to say that you mandate these guys, these utilities, or the FERC contact a tribe, a tribe or groups of tribes, and that they be part of the process, whether it's this collaborative team that we're dealing with now, something else different. But -- so that we're not left on the table and so that we're -- you're communicating with us and you make sure that we know.

And the same thing with these little scoping meetings and stuff. Make sure that there is a scoping meeting mandated for the tribe, specifically with that tribe, because that's part of the problem. We get lumped in with all the other stakeholders as if we're just a common stakeholder, but we're not, we are sovereign nations. And so at the same level as states.

And so we should be afforded some sort of, you know, I guess I don't know, to use a different word, but

dignity, when we're placed with the fishermen and the hikers and the bikers, it seems like we're just -- are dignity is low to average stakeholders. So I'll save those for my comments, but that's some of the things I just heard from trying to digest the information.

MR. DACH: I think those are pretty accurate.

The first slide I showed you, the members of the Interagency Hydro Power Committee. And they -- the Bureau of Indian Affairs of course was participating, but none of the tribes were.

And we had hoped -- and part of the reasons why we had these special meetings and we went across -- you know, across the country was specifically to get that kind of input. We're not opposed to trying to make this -- I mean the goal is to get some process that's going to work for everybody.

So if there are specific requirements that are necessary, and we anticipate that there are specific requirements necessary for the tribes, we are going to do our best to try to make sure that we can accommodate those in however we move forward. So the comments that you make, I think, are good comments. And I think we can work with those.

MS. MESSERSCHMITT: Well, while the integrity maybe there, if you treat one of the entities as an

afterthought, you're not going to meet your goals. As Daniel said, the tribes are federal-recognized tribes which means they are a legitimate government. And as such there are provisions that -- and mandatory regulations that they be dealt with as tribal governments, not as public and not as an organization.

So, yes, they should have had a seat at the table in order to develop some kind of proposal and have input into that. Since that did not occur that is why you have this forum and that is why we came to see if we can't fix some of these things.

When Daniel talk about the dispute resolution process and, yes, it does sound like a little group decides, and then it goes to FERC.

This IHC Proposal doesn't allow for an appeal process. There is no section in there, under the 60 days, where if you felt strongly about the need for a certain study, and FERC said no, or the little committee said no, there is no appeal process. You know, you're stuck.

Another -- you were saying that between block 11 and block 12 that there should be a dispute process, or there is a dispute process, but it's not in here. And, you know, where does that section come? Because ultimately in a dispute resolution process somebody loses or everybody loses in order to gain something. And that's why I think

Daniel was saying, and why, you know, we came to the table to say, you know, you can't -- you shouldn't treat us as an afterthought. You know, we should be built into the process and go forward from there.

Let me give you a for instance. In dealing with the two relicensing companies that we deal with in Central California, we have one licensing company that stepped up to the plate and said, okay, we are going to do an outreach. FERC wasn't making them do this, per se. They said: We are going to bring it to the table. We are going to have you at the scoping meetings. You know, give us your input on what we have been regulated by FERC to do. And, you know, we have a good working relationship with them.

On the other hand, we had another licensing applicant that said: We don't have to, we don't want to, and you aren't going to make us. And so we had to back up and say: well, wait a minute. Yeah, you have to do this stuff.

And it was SHPO that came to the table and said, wait, you can do this. And then FERC said, oh, yeah, we can't do that. But, I mean, why did it have to get to that point? Because the applicant had the option to not include people. So if you streamline this process, the gap narrows, it doesn't widen to leave people out of the

process or to give them a limited time.

Like Daniel said, tribal governments are not very big and we don't have large staffs, so deadlines do get missed. And in your proposal, that's why I was asking about the time frames, there is no mitigation for that. These are hard and fast times and if you miss this timeframe, then you're left out of the process. You're standing there with your paper saying, but I only had two days notice. So what, you're out. So these are the kinds of things that, if not in this one I'm hoping to see it in the next two proposals.

And I'll be quiet now. I'm sorry, I didn't mean to dominate this meeting. It's just that these are certain things that, like I said, if you had had input you'd probably have seen in this IHC proposal, because those discussions would have been brought to the table, and people that have not had input, an agency that -- or government that has not -- didn't have input would probably go forward, because they would be included. So that's it. Thanks.

MODERATOR MILES: Ann?

MS. MILES: I actually -- Ann Miles with FERC. I would -- we would like to take today -- and we have the entire day to talk with you very specifically about how to integrate the tribes into this process. If what -- the

goal I think of all the processes that are on the table are that everyone to be involved from the very beginning.

And what we need to hear from you is how do we do that, so that you are there at the very beginning and so that you do have the opportunity within these timeframes to speak up for the issues that you need identified and the things that you want studied, things you want done through this process.

One of the issues for us is how do we figure out what tribes need to come to the table. How do we know your name is on the list, and you're the only ones who can tell us that. And that's exactly -- you're raising the exact thing and we're so happy that you're here today to be able to tell us how to get that into this process.

So we normally wait to get into this discussion of these kinds of issues to the afternoon. But I don't know what's the best use of our time in this, because things you raise, I don't want to leave this room until we've figured out how, for your point of view, you would best be fit into this process today. So --

MR. DACH: Or to any process. I mean it doesn't have to be the IHC process or anything else you hear. If you know how it's going to work better from your perspective, I mean that's why we're here.

MS. BEIHN: Well, we can go ahead and give you

insight maybe at the end of the day as to how to go about having communications with our tribes.

MR. DACH: Sure. Sure, yeah.

MS. BEIHN: Individual tribes, because it's not working to what we're doing now.

MR. DACH: Yeah.

MS. BEIHN: It's not working, you know, to have BIAs coming in now. And in one of the processes that hasn't, you know, really been informative to us or been there before that, and we're already two years into another process. And I just got some notification that you might be interested in that process. So, you know, whether they were at the table with you folks before this, we'd had no idea they were.

So we need to kind of iron that out with them, with us and with all of you.

MR. DACH: Right. And --

MS. BEIHN: And I think at the end of the day, once we hear everything, then we can comment on that at the end of the day.

MR. DACH: Good, good.

MODERATOR MILES: Brett, did you have something?

MR. JOSEPH: Yeah. Just to kind of build on Ann's comments, just to make a couple of quick points. One is the list of questions that Tim went through originally



in the Federal Registered notice. The genesis of that list of questions was the recognition in developing IHC Proposal, that we, in putting this proposal together for purposes of feeding into FERC's rulemaking effort, this is a proposal that was put together at the staff level by representatives of the three agencies -- or the four agencies involved.

But it does not -- it's not the product of the kind of outreach in the regions or input, you know, with the states. I mean you're going to see some obvious gaps there. And we recognize that this is -- you know, this process is not complete until we've gone through bringing in, so that the tribes are not an afterthought. But the way that we're trying to do that is by, you know, putting those questions out there as recognition that these are questions that this proposal does not answer on its face. They're ones that need to be answered through the process that we're in right now.

MR. DANG: I just had a comment which is related to what Daniel and Cathy mentioned regarding the study disputes. I think one of the problems that I've seen is that throughout the dispute resolution process, that it looks like on boxes that the Commission's going to have the final say on what study, when and how it's going to be detail conducted. And I think that there is no appeal

process there where a tribe can give their inputs or comments on the other side. I think that's the valid point there.

MR. DACH: If you notice in the process itself, we did include the tribes in that same process. So, in essence, they have the same access that the other resource agencies would have, whether or not that's sufficient. The Commission does, in this proposal, have the final say.

This proposal is set up such that this group -- let's say a tribe had made a request that got denied and they wanted it to go to dispute resolution. Their people -- a person from the tribe, theoretically, a person from the Commission and this neutral third party would sit down and go through the same process. And then they would make a set of findings. And then that would go to the Commission for the final decision.

We anticipate that in most cases the Commission will go with the findings of the group. I mean that's what we anticipate. It's not to say that that will happen in every location. But we have certainly anticipated that by going through this process, we establish a record by sort of, you know, other folks who can take an objective look at it that says we looked at it, it meets the criteria that you guys all established; the study should be conducted.

So we think that will be, you know, some pretty

strong evidentiary support to then not include in your decision, or to go in a different direction. So which is -- because of course from a resource agency perspective, we wanted to make sure that, by God, they were going to do whatever this committee found. But we're willing to say that this is going to be -- you know, this is going to be a pretty tough burden for them to overcome, which is why we went where we did.

So again -- and I understand the issues completely. We did try to include the tribes with the same sort of access that we had. But we don't know, for example, if that's sufficient for the tribes. We don't know if just doing what we're doing is enough or if the steps that we've put in the process for us are the same steps that the tribes would need.

So, again, that's what we're hoping to rectify in this -- this whole -- and not just this, you know, today, but in this whole effort, through the notice of proposed rule and then the final rule. We hope to make sure that we iron this out. So we're really in, you know, just sort of the early stages of the process. So I think this is -- it's good timing.

MS. PATTISON: Malka Pattison. I think in some ways the box that gets the least attention is the box of most importance to tribes, the box without a number, I call

it box zero.

That early letter from FERC to the licensee, if done properly it should identify who that licensee needs to deal with, including all the tribes, with direct impacts, or indirect or cultural resources impacts, and should lay out a process for doing just that.

Currently, all too often, the cultural resources aspect is left to the very last and, unfortunately, delays what would be an otherwise issued license, because it is an afterthought. Done properly, box zero should be a letter that doesn't just say, your license is expiring. Please start thinking about it. It should say how to think about it, with whom to think about it, and how to do it correctly to make it a good license and a license that doesn't have unnecessary delays. So help us make box zero very good. Thank you.

MODERATOR MILES: Okay. If there are no more clarifying questions for Bob, why don't we move to the second proposal prepared by the National Review Group. Alan will be making the presentation on that. And while Alan walks up here and gets ready for that presentation, what we'd like to do maybe is, for the new guest, is do a quick round of introductions. Okay? And so I'll start.

My name is Rick Miles. I've been asked to moderate, facilitate this forum today. I'm from the FERC.

MS. PATTISON: Malka Pattison. Up into recently I was Bureau of Indian Affairs FERC Coordinator in Washington, D.C. I'm now in the Secretary's Office of Policy Analysis, continuing to work on FERC and other issues.

MR. BERG: Mel Berg, Bureau of Land Management in Washington, D.C., as a Power Coordinator for BLM.

MS. MILES: Ann Miles. I'm the Deputy Director at FERC, with the office that deals with licensing and relicensing.

MR. ART ANGLE: Art Angle, Enterprise Rancheria. We're here to listen and learn what's going on here. I also have been informed to let you know that we're not considering this government-to-government relations.

MR. CLIFFORD ANGLE: I'm Clifford Angle from Enterprise Rancheria also. And we're here to see what we can learn about the process.

MS. EDWARDS: Hi. Debbie Edwards from on Mooretown Rancheria.

MR. HOGAN: Ken Hogan with the Federal Energy Regulatory Commission. I'm a Fishery Biologist in Hydro Licensing.

MS. O'HARA: Kerry O'Hara, Department of the Interior Solicitor's Office in Sacramento.

MS. RISDON: Angela Risdon from Pacific Gas and

Electric Company.

MS. JANOPAUL: Mona Janopaul, Forest Service,  
Washington, D.C.

MS. TUPPER: Julie Tupper, Forest Service,  
Pacific Southwest Region, California.

MR. BEIHN: Patrick Beihn, North Fork Rancheria.

MR. BLAIR: John Blair, FERC, Licensing in the  
Western United States.

MR. DACH: I'm Bob Dach with the Fish and  
Wildlife Service, representing today the Interagency  
Hydropower Committee.

MS. BEIHN: I am Lu Beihn from North Fork,  
representing North Fork Rancheria and also a Consultant  
Liaison for the relicensing of SCE.

MS. MESSERSCHMITT: I'm Cathy Messerschmitt,  
North Fork.

MR. RABONE: Geoffrey Rabone, Southern California  
Edison. I'm in relicensing.

MR. DANG: I'm Tom Dang with the Bureau of Indian  
Affairs in Sacramento.

MR. CARDENAS: Daniel Cardenas, Pit River Tribal  
Council.

MR. GARCIA: Doug Garcia, Central California  
Agency, Bureau of Indian Affairs.

MR. CANADAY: Jim Canaday, State Water Resources

Control Board, FERC Licensing Team.

MR. McKINNEY: Jim McKinney, State of California, the Resources Agency and part of the Interagency Hydro Team at the state level.

MR. JOSEPH: Brett Joseph with the National Oceanic and Atmospheric Administration, representing National Marine Fisheries Service, also as a Participant on the Interagency Hydropower Committee.

MR. WELCH: Tim Welch, Federal Energy Regulatory Commission.

MS. SMITH: Gloria Smith, Interior, Solicitor's Office.

MR. SONEDA: Alan Soneda, Pacific Gas and Electric Company.

MODERATOR MILES: And what we've achieved or accomplished so far this morning was to give an overview and get some background as to why we're here and what our goals are. And when you arrived we had just completed the first presentation, one of three proposals that have been surfacing during our discussions with different entities around the country. And the first one that was just completed was prepared by the Interagency Hydropower Committee. And we're not going to hear the second proposal which was prepared by the National Review Group. And Alan will make that presentation. Alan.

MR. SONEDA: Thank you.

MODERATOR MILES: And following Alan's presentation, if you have questions, clarifying questions, we will follow the same format we had before, we'll get into a discussion of it.

MR. SONEDA: All right. Thank you.

The date on this slide is October, because this is a presentation that has been delivered several times already, at different regions of the country, by other members of the National Review Group.

The first thing I like to talk about is what is the NRG. It is simply a group of licensees and special interest groups whose mission was to improve relicensing outcomes. We attempted to try and develop solutions that went beyond just the voluntary and into administrative or regulatory fixes. And even potentially talking about changes to law, although we did not make any progress in that category.

The National Review Group participants in the nongovernmental organization category included American Rivers, American Whitewater, the Hydropower Reform Coalition, and the Natural Heritage Institute. It had a facilitator, Kearns and West, and a number of industry participants, including a number of licensees: My company here Pacific Gas and Electric Company. Southern California



Edison is also represented here today by Geoff Rabone. A number of other licensees, as well as consultants to the licensees in their relicensing proceedings. These were the active NRG participants.

The federal agencies also served in an advisory capacity. We initially tried to involve them directly as members of the National Review Group. And there were some constraints through law and other rules that precluded that very active participation. But they were at the table throughout the process in an advisory capacity.

Because we were trying to get folks with experience in relicensing together to talk about what were some of the issues and problems that we encountered, and what were some common-sense solutions that might fix those problems. The thought of trying to make those fixes, recommend those solutions without some advice by the agencies whose rules might well be modified by those solutions didn't make sense to us. So we tried to make sure that the agencies were actively involved.

As Jim mentioned, this group came together several years ago, at first under the umbrella of what was called the Electric Power Institute at one time or Electric Power Research Institute, or now called EPRI. At that time, and as I recall, there was a much more active attempt to bring state agencies and tribes to the table at the same

time.

Over the course of a number of years of work and a number of meetings, those meetings principally were held in Washington D.C., largely to take advantage of the ability of the agency advisors to participate. And as those meetings progressed, the state agencies and tribal participation, as I recall, did eventually drop off. And we proceeded as best we could with those folks that continued to be able to attend the meetings and participate in those discussions.

What we tried to do as a national review group was to first brainstorm what were some of the main issues and then prioritize which issues we thought we could, as a group, tackle successfully. We tried to start with what we called low-hanging fruit. You know, tackling the issues that might reasonably be fixed fairly quickly, fairly easily. And eventually we got to an issue of trying to solve what about all the duplicative of work that goes into the environmental review process.

So for a number of reasons the group decided that one of the things they wanted to try and tackle was what we called the one-cycle NEPA process, or coordinated environmental review process, so that Agency participation could be improved so that late discovery of key issues -- nobody's interest is served when parties proceed through a

proceedings and only very late in the process discovery there's an issue that hasn't been dealt with.

How could we combined the NEPA processes for the consulting agencies and for FERC for better efficiency and more and better quality decisionmaking. How could we eliminate redundancy and conflicting documents that came out of the process. If one agency prepared its own environmental document and another agency independently prepared its own, and there were conflicts or redundancies between those.

How could we reduce uncertainty as to whether the applicant had met the study requirements that everyone believed were needed.

I've got a second slide here that has a few more reasons. So to provide procedures for cooperation, including dispute resolution and decisionmaking. To reduce informational requests from the consulting agencies that came late, what we called the additional information requests. And then finally to delineate responsibilities of each agency for collecting and assembling the information of the documents.

As you can see from how we went into this, and as I roll out what the process that we came up with looked like, there are a lot of similarities between the approaches that the Interagency Hydropower Committee came

up with and, in fact, the approach that the FERC is trying to do in this rulemaking.

I'm going to show next a couple of slides that attempt to lay out in a visual format, kind of a flowchart, how this process works. And there's not a lot of detail here. We tried to make this a fairly high-level map with some notations along with it.

So to start, we start up here in the upper corner, with even before the notice of intent, filed by the applicant, to relicense the project, there would be an initial meeting and some development of project consultation and description so that parties would know what the applicant has in mind. The intent of these early optional steps was early issue identification and getting agencies and other stakeholders involved as early as possible.

This step in here, with the notice of intent, was combined as the IHC Group also recommended with a pretty expensive package of initial environmental information and a record of the consultation that had gone on in the pre-NOI optional phase. So in addition to the NOI itself, the Notice of Intent to Relicense, there would be a bunch of things that we call the initial information package, and initial consultation document, all the environmental information that we were aware of or other parties had

raised. A record of the consultation. A description of the issues that had been identified, and out of that description of the issues, what information was still needed so that study proposals and a list of specific studies could be developed. And then, finally, a draft scoping document.

That package would be subject to a comment period so that parties could see in writing what had been prepared and comment on it.

This is the start of the environmental review process, and in the next box here, scoping and issuance of the scoping document. The bullets under this box make it clear that our intent was to encourage as much cooperation between FERC and the agencies who had their own responsibilities under environmental statutes to prepare their own reviews.

This note box, here in the corner, says a little bit about what we thought might be needed to get there, that in many cases there might well need to be an agreement, a memorandum of understanding between FERC and the agencies, with each specific agency perhaps as to how those two agencies would cooperate, what their environmental review responsibilities were. And how could each agency's responsibilities and obligations be complied with together, so that there wasn't redundancy, there

wasn't duplication.

Hopefully with the signing of an agreement like that, the duplicate of requirements could be reduced and the need for separate processes could be eliminated. So the steps under this box show FERC and the agencies acting in cooperation to issue a scoping document, number one, to hold scoping meetings and a site visit, and to requests comments on the scoping document number 1. Out of all that the licensee would develop its final study plan outlines and submit them to the parties.

The next box, it's called study development and dispute resolution. So out of all this discussion, in the event that there was not full agreement on the study plans, some means of resolving disputes needed to be developed. The one we came up with as a national review group has some similarities to the IHC Proposal. It's basically a three-party panel with an independent neutral added to it. Hopefully, out of all that, and with the same caveats that Bob talked about with their dispute resolution process, we come full agreement and an ability to proceed with the studies that everyone agreed were the right studies.

So continuation from the first slide, here we are in a box called Preliminary Draft Environmental Document and Preliminary Conditions. The licensee provides a summary of studies planned and conducted; issues this PDED,

Preliminary Draft Environmental Document; public meeting that would be FERC notice; a comment period on the document; and, in response to the comments, licensee's additional information responding.

The box called Application Filed remains the same two years prior to license expiration. Following that license application being filed, the FERC tender a notice and a notice of ready for environmental analysis as well as revised preliminary terms and conditions by the agencies.

The next box here, Draft Environmental Assessment, this is a draft NEPA document, either an EA or EIS. Public comment period as well and final draft terms and conditions.

Final box is simply the Final Environmental Document being issued by FERC and the agencies and the issuance of the license by FERC.

This is a very sketchy overview of how the process might flow. Not a whole a lot of detail. The National Review Group Proposal is in this blue book that you have, and in word form the process is spelled out in a little bit more detail in about the last 10 pages of that blue booklet.

I'd be glad to answer any questions or perhaps enlist the help of Geoff Rabone, from Edison, to answer any questions you might have at this time.

The final slide that I think is also part of the handouts at the front table outside is the next step slide. And I'll show it just so you will know what we were thinking about four months ago when the slide was last revised. We issued this proposal and got some comments on it, incorporated those comments, issued a revised document, and it was then included in this notice that FERC issued on September 12th.

Are there any questions?

Yes.

MR. ART ANGLE: Art Angle, Enterprise. My question is the collaborative effort that's being conducted now in our FERC relicensing in Oroville, and we had a choice there from a traditional licensing process and also a collaborative. Is this new process you're developing going to be in the middle of those two or is this going to kind of be a continuation of the collaborative effort?

MR. SONEDA: That's a very good question. I would say that National Review, for the most part, thought of this as the simplest fixes to the existing regulations that we could come up with, so I guess it is more trying to fit into the existing regulatory framework with minimal. It's probably closer to traditional. It has the same traditional licensing process milestones. It will be just much more opportunity for the agencies to work together.



MR. WELCH: I'm Tim Welch from FERC. Art, the question that you just asked is one of the questions that FERC is asking the public and the tribes about. If we develop a new process, whatever process it is, whether it's the one that's previously presented or this one, we asked the same question: Should it be a third, should it be just one, you know, should it be replaced? That's the type of input that we're looking for.

MR. ART ANGLE: One of the --

MR. SONEDA: Oh, I'm sorry.

MR. ART ANGLE: -- situations we're dealing with up there in the collaborative process is who constitutes a consensus. And we have different agencies that have different standings within that collaborative process, so we're kind of grappling over that.

MODERATOR MILES: And just again, following the clarifying questions, we are going to have an opportunity for people to make presentations separate and apart from the questions you have today on those proposals you have here, and then we'll engage in more dialogue.

Any other questions of Alan?

It's normally -- I mean it's time for -- this is normally when we take a break. Why don't we take a 15-minute break. And then we'll come back and here from the State of California what their proposal is, which we heard

yesterday, and then the Jims will make that presentation.

And then following that you have an opportunity to ask the State of California some clarifying question about their proposal.

And then we'll start the presentations, if any individual would like to make a statement to us. Keep in mind we do have a court reporter. We are taking a transcript of this session. And then following that we'll find out which topics you would like to talk about, discuss, and we'll engage in a discussion about those topics. Does that sound okay?

So let's take a 15-minute break. And it's 20 of 11:00. Let's get back at five of 11:00, okay? Thank you.

(Recess taken from 10:40 a.m. to 10:57 a.m.)

MODERATOR MILES: Okay. Let's get started.

All right. Do we have the set-up for the State?

A couple of house chores. When you speak into the handheld microphones, it doesn't go into the loud speaker but it goes directly to the recorder. So keep that in mind when you speak, that it's not being amplified.

The second thing is that, as with all the other conferences, we've asked parties or speakers not to engage in a discussion of an ongoing conflict before the Commission. We're not here to resolve any ongoing disputes. But we can understand why you might want to take

some facts from that situation and apply it to a discussion here today and to make your point or to ask about a question that might be relevant to a new licensing policy.

MS. PATTISON: When we speak into the handheld --

MODERATOR MILES: Raise your voice.

MS. PATTISON: She's going to be jumping out of her seat --

MODERATOR MILES: No, no. If she does, we'll know.

Okay. Then let's go ahead and begin. Our next presentation will be a proposal by the State of California, and Jim will be making that presentation.

MR. McKINNEY: Before the Jims get started I want to make sure that everybody has a full set of handouts for the California proposal. There are three documents in that. There's a flowchart and then there's a few pages of text or two packages of text.

MODERATOR MILES: Does everybody have a copy?

Yeah. I gave my copy to the court reporter. Do you have an extra copy?

MR. McKINNEY: Oh, yeah.

How many sets do you want?

MODERATOR MILES: Just one.

I guess what we could do, for the record, copies of the three documents were transcribed and copied into the

record yesterday, so I'm not sure that we need to do it today, okay? So let's begin.

Jim.

MR. McKINNEY: Okay. Well, Jim, I will kick it off here. So, again, Jim McKinney, California Resources Agency, and a member of the California Interagency Hydro Team, which include the State Water Resources Control Board, the California Department of Fish and Game, the Attorney General's Office, and the California Resources Agency.

I just wanted to say a few introductory remarks to the California Proposal before I turn it over to Jim Canady, with the State Water Resources Control Board.

California put this proposal together because some of our efforts to, say, work with the Interagency Hydro Team -- that's actually not even accurate.

We were surprised this summer to find out that there were two proposals coming up for reform, one by the Interagency Hydro Committee, the other by the National Review Group. The State of California and some other states were wondering, well, where are the state interests in these proposals.

And we've had a chance to look at their proposals and determine that they don't fully meet the states' needs, nor do they really address what we view as the root causes

of some of the issues with relicensing. So based on that we took it upon ourselves, in collaboration with about 10 other states nationally that represent large hydro-producing states, to put together a proposal that we think

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answers the questions and issues that are important to California and the other states.

This has been developed on very short notice.

And, as some of the federal agencies have said, this was a work in progress. And we are very open to working with other groups, tribes, other stakeholders, to make sure that this really meets as many people's needs as possible.

And I also want to thank FERC for really doing an excellent job on creating an atmosphere over the last few days where interests of the states and the tribes and other stakeholders can be fully incorporated into your dialogue. So I just want to make that clear. We really, really appreciate this opportunity.

The way our proposal differs from IHC and NRG is that it seems to us that if you look at both those proposals they assume perfect, rational decisionmaking, and perfect information. Kind of what you do in economics.

So if you think of the problem as just that there are administrative inefficiencies and there are honest disagreements between all parties on study design and

proposals, then the proposal put forth by both those groups really solves the problem because it addresses the administrative efficiency issue through timelines and sequencing, and it has a study-dispute resolution process.

So if you think that that is the definition of the problem, these proposals work very well. In our view, the definition of the problem is different. State and federal agencies, the environmental scientists need enough information to make decisions under statutory provision to create a substantial evidentiary record upon which they can make their ultimate decisions, whether it's 401, Clean Water Act, or under Section 10(j) for the Department of Fish and Game. That information is generally late, incomplete, or just outright missing.

In our view the goal is to make sure that we set a definitive timeline and process so agencies get the information they need so can they can do their work under state and federal statute.

So what we've tried to do is create a process that creates specific timelines, milestones, and we ask that FERC exercise its current authorities and maybe some expanded authorities to make sure that the timeline deadlines are met. And whether that's through some level of penalty or censure, what-have-you, we don't know the answer yet. But we want to create a definitive process

that creates some accountability that's transparent to make sure that the process runs in an efficient manner.

So that's it for me, and I'll turn it now over to Jim.

MR. CANADAY: My name's Jim Canaday, C-a-n-a-d-a-y, and I have been working in hydro relicensing for 20 years. And part of our process is kind of based in part of that and some other colleagues that are still extant, who have been working in hydro relicensing for that long.

And one of the problems that we tried to address, which was a concern I think of everybody, was first of all when does it end and does it end appropriately. And while our process contemplates a six-and-a-half-year process in total length, it certainly has room to be shorter than that. But we think if you started it six and a half years, then what we really accomplish is what I think everybody is attempting to accomplish, and that is a license is issued prior to the expiration of the existing license without having to issue annual licenses under the previous conditions of the existing license.

So we created a process. Rather than strict 15 days and then moving on to the next little box, our experience has been that if you have a timeframe that isn't -- that doesn't have a deadline but it's a goal, you double

it or triple it and then that's real. If you plan for 45 days, it takes 90. That's the way any kind of decision path works. It's not the FERC process.

But, anyway, I'll kind of take you through our proposal. Now we believe that there should be two processes.

One, the existing ALP, which we have several going here. We are not critiquing that for the fact that we don't have enough experience in it to suggest changes. We may at the end of the process, but we think right now that those processes are working fine.

We have had disputes. We have resolved them internally. And it's moving forward. And to the credit of the Southern California Edison and their Big Creek system, we appreciate the efforts that they're making and likewise the Department of Water Resources in their Oroville undertaking of an ALP process.

So our focus was to look at the traditional licensing process and look at how changes could be made there. Our first kind of view was: Let's don't really replot a field. If we have kind of a framework there, let's use it. And we think the traditional licensing process as FERC has in its regs is a good Christmas tree, if you will, and we're going to hang some balls on it to make it work better and make some subtle changes so that



it's efficient for everyone and it meets the needs of all the parties.

So, anyway, we propose that it starts at six and a half years. And that, at the start of six and a half years, we would have the licensee file its notice of intent and an initial consultation package. And that initial consultation package would be as detailed with as much information is available to the licensee. And it can be developed in consultation with agencies, tribes, and stakeholders. So it isn't something that they just internally do. We would hope that they would take advantage of the information that may already be known by other parties.

With the filing of that at six and a half years out, we contemplate frontloading the first year with very significant work. And the product of that first year is working with the agencies, the tribes, and the stakeholders in developing a study plan. It progresses from looking at goals and issues.

And in our little flowchart, obviously the box -- each page would be a box if we put everything in it. So a lot of this stuff is implicit. It's within or contemplated within our process, but it would be a development of issues and goals. And we think that's important for all the different participants.

And then from that we develop a suite of study plans to address those issues and provide information that if there are regulatory goals that parties have, that they can use that information to achieve their goal of whether it's permitting, or whatever.

And the action step, though, that we've kind of instituted, that at the near the -- and it doesn't have to wait till the end of that year, but we give you a year to do it because we think this is one of the most important steps, is that once the study plans have been developed, that we would propose that FERC issue a formal order adopting those study plans and at the same time adopting a schedule that clearly outlines what the next timeframes are going to be.

And we believe that with existing FERC regulations that in theory if it was found necessary that, by lack of diligence, that they could issue civil penalties for the studies not being completed.

Within this development of these study plans, we also provide for a dispute resolution mechanism, if necessary. We believe for the states and possibly the tribes, because I'm not an attorney, and I don't know tribal law, but we certainly believe that the State is a sovereign and has a right to meet its mandates, that if we need a study for 401, that we don't go through the FERC

dispute-resolution process, which they already have on the books, we have our own state resolution.

If I required a study and a licensee was in dispute and we couldn't resolve it, they could take it to, first of all, my division chief. And if they weren't satisfied with that, then they could petition the Board, and the Board could hold a hearing, an evidentiary hearing, and then resolve it. So we believe we have a mechanism to deal with that.

We also feel strongly that if there is a dispute resolution it needs to be conducted and resolved within the state locale rather than in Washington, D.C. Because I know our funds are limited, our time is limited, and I know a lot of the parties, other parties' time is limited. And we think that if, indeed, FERC is going to be a part of that resolution, that it needs to be conducted within the State of California in the case of it if it is a California process.

In any case, at the end of the first year, 5.5 out, we would have developed study plans. We would have a schedule. And the licensee would also have some surety, we hope, and that's the intent of this, is that there would be some surety of what would be required of the licensee for the information to develop.

One of the things, you should have three

documents. One is the flowchart that I'm just kind of taking you through. The other is a narrative that kind of expands our flowchart. And then the third document is just a back-to-back. It's what we believe are some of the benefits of how we -- what our process achieves. And we hope that -- we believe that it addresses most everybody's concerns.

One of the things that we have done over the last year or two, and basing on the experience of several of us, we believe we have been good listeners. We've participated in a lot of processes. We've heard federal agency concerns. We've heard tribal concerns. We've heard stakeholder concerns. And certainly understanding the licensee's concerns. And we believe that this focuses on the issues that we've heard.

And it isn't just a proposal to meet what the State wants. We think it tries to incorporate and provide opportunity and access to all the interested parties.

So we're now at year 5.5. And this starts the study phase which provides a minimum of two years for which the licensee can conduct the studies, depending on the need. And some studies may not need to be two years.

Actually, because it is at 5.5, if we did need a third year of study, it contemplates the fact that that ongoing study, as we pass through that first two -- the

next two years, there could be still time in the process for a third year or a study that connects to something that has been already done. And we go, oh, we need to get some more information on this. It triggers a need. There's still room for that in this particular process.

So in this two-year, from 5.5 to -- or actually two and a half years, 5.5 to three years out, this is where the licensee will conduct the studies. And we contemplate that the study plans can be amended, the same kind of thing that the IHC folks proposed, that we would come back after one year, look at what progress was made. And that's kind of a checkpoint, too, because we can hold the licensee's feet to the fire if they haven't been conducting the studies. We're assuming that that's not an issue, but it allows us to check back in. But we can look at, well, did the studies or are the studies collecting information that we believe we need that, based on what we were trying to resolve, the goals and objectives of the study plans. And if changes need to be made, changes can be made.

Also at this particular time the requests for additional studies, additional information requests can be made.

At the same time, and rather than doing kind of a sequential process, we're trying to do parallel things where they can be done. We believe that during this

two-and-a-half-year period, that the licensee starts to develop their license document, draft document. There's a lot of engineering besides Exhibit E which most of us -- that's what most of us focus on. There are other exhibits that have to be in that, that need to be developed. And this document can start to come together at that particular time.

We reached at 3.0, and before the license expires, and it's in this year that the licensee submits a draft license application to the agencies, the tribes, and the stakeholders, and sends a copy to FERC. The draft application contains draft PM&E measures so that the agencies, tribes, and stakeholders can look at what the licensee is proposing based on the information or the objectives of the licensee.

When FERC receives the draft license application FERC will issue a comment, a notice of comment for scoping for the NEPA process -- and I've got little NEPA there, for the State processes -- and will issue a scoping notice.

We don't believe that the formal NEPA process should start before that. We think you have to have a project. By that time you definitely know what the project is. The licensee may have, through these first years, decided to amend its existing license by adding something to it. By this time we will know, the licensee will know

fairly clearly what their project is going to be.

Therefore we can and FERC can analyze that project in detail rather than early on.

Now the CEQA guidelines encourage as much scoping and upfront work as possible, and we see everything that's been done up to that point meets the intent of that NEPA involvement of the agencies, tribes, and stakeholders. So we don't see that we're just starting NEPA. We're just saying we're formalizing and starting the process at this time, but it's already been collecting information prior to that.

With the submittal of the draft license application to the agencies, tribes, and stakeholders, there's a 90-day comment period on the draft application by those parties. And in our comments we can recommend preliminary -- and I use the word in quotes -- "preliminary" PM&E measures. And at the same time the comments that we're sending back will address the NEPA scoping, kind of our final comments on what needs to be done for NEPA.

We may also address additional information requests at that time. And this would be a time where parties, we see, could file interventions because, one, they'll know what the project is. They'll know what the licensee is proposing. And if it meets their needs, then

they don't have an issue possibly. But if it doesn't meet their needs, they can file an intervention on behalf of the parties that they represent and move forward with that intervention in trying to resolve their issue.

The licensee is required to respond to the comments and any AIR requests to the license application.

And we would assume that there would be a dispute-resolution opportunity there if there was a dispute over

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an additional information request by a party.

FERC can also -- staff, as they're reviewing this document, can issue AIRs as well.

But with the formal comments or response to the parties that commented to the draft license application would end the second stage of the consultation process.

And we're now at 2.0 years out. At this time, in the year two zero -- or 2.0 I should say, the licensee can complete any outstanding studies. And if there was a third year this is where it would come into play or any studies that may have been identified or requested in AIRs.

This also, we believe, is where the formal consultation should be initiated and informal consultation under the Federal Power Act and the 106 could have taken place earlier, but we believe that this is the spot where



we definitely need to have that take place so that we don't have those issues hanging out later on, that they can be addressed as soon as possible in this year.

In this year FERC has to take another affirmative action, and that's where FERC must determine that all the studies that have been required and adopted in the order for the final study plan have been completed and have been reviewed by the agencies, tribes, and stakeholders.

And if a study is not completed yet, FERC cannot issue its Ready for Environmental Review Notice, the REA, until that finding is made. That way we are assured that when the NEPA process goes into its analysis phase that it, indeed, has the information that all the parties wanted to be developed and collected available for that analysis through the NEPA process.

With the issuance of the REA there's a 90-day comment period. And the agencies and tribes at that point can provide preliminary, mandatory, and recommended conditions to FERC. And again I stress "preliminary." But it's important. It would be a helping hand to anybody doing an environmental analysis to have an idea what the agencies and the tribes were thinking that needed to be analyzed as far as conditions in the license.

Finally, in year 2 or our contemplated year 2, FERC will issue a draft NEPA document. Now if it's an

Environmental Assessment it would have a 45-day comment period. If it's an EIS it would have a 60-day comment period.

After the issuance of that draft document, then the final 10(j) and 10(a) recommendations, which would be submitted to FERC by the agencies, the states -- and now I'm separating states from agencies -- federal agencies, states, tribes, and then other stakeholders.

In the last year before the license expires, this is where we see the licensee -- which is different than the process today -- we see this is where the licensee files its 401 request or Coastal Zone Management from the states and the tribes, to act on their request.

After that request, then FERC would issue a final NEPA document. And we're proposing that, to the extent feasible, that 90 days after the FERC final NEPA document, that the agencies, states, and tribes would issue their final 4e, Section 18, 401, CZM conditions.

Now recognizing that there are, for states certainly, we have administrative processes for appeal, as does the federal agencies. And, again, I'm not sure what the laws that would affect the tribes would be but, nevertheless, if they had a process for review, it would contemplate that as well.

And then, finally, FERC would take action based

on this information and issue its license.

And, again, our schedule contemplates that the FERC license would be issued prior to or jointly with the expiration of the existing license. And there would not be a need for annual licenses.

MODERATOR MILES: Okay. Are there any clarifying questions or questions regarding the State's proposal?

As indicated, once we have completed that, then we get into any presentations. Two individuals did sign up to make statements.

Yes, please.

MS. MESSERSCHMITT: Just a comment. Jim, back in 5.5 years it talks about a minimum of two years' data.

MR. CANADAY: Correct.

MS. MESSERSCHMITT: It'd be nice to put some parameters in there so that the data is relevant and up to date, because one of the problems that we encountered was that an applicant was using study data that was quite old. And so I think that that's -- you know, but it has to be -- I mean just any data doesn't work.

MR. CANADAY: Well, we would contemplate that that -- that issue and that discussion would happen before the development of the final study plan, because that information --

MS. MESSERSCHMITT: Okay. That's what I was

wondering.

MR. CANADAY: -- that information would already exist and would be known. And then the licensee, or any other agency that had data, for that matter, could say: Here we have a data set. Is it relevant? Is it fresh enough that addresses the issues and the goals and objectives of the parties here.

And then that determination is made. And that's part of that decision in the final study plans of whether that data is going to be accepted or not.

MS. MESSERSCHMITT: So there is a provision on that. Good. Thanks.

MODERATOR MILES: Yes, Geoff.

MR. RABONE: Can I ask a question for clarification? I'm just --

MR. CANADAY: Can I tell him no?

(Laughter.)

MR. RABONE: Geoff Rabone, Southern California Edison.

I just wanted to ask for a little more clarification of what the draft license application looks like when you're still working on finishing studies and things like that.

MR. CANADAY: At year 3 you'd already have had two and a half years of study development. And we would

assume that in practice, working with even -- working with Southern California Edison, that the reports are going to be developed as the studies are completed and provided to the parties for review and analysis.

So I wouldn't see it coming at the end and all of a sudden this big giant data dump landed on everybody. These studies are going to be coming in as they're done and as they're written up. And they're going to be reviewed by the parties, and those discussions would take place. So we think by the year 3.0 you ought to be able to have a draft license application put together.

And you have to realize it's almost the same amount -- in fact, it's more time than you have under the current traditional processes, because remember we started at 6.5. So we think it provides you actually additional time to develop the document. The document will be -- we believe will be a stronger document, will need -- and reduce the need for additional information requests, and therefore extending the process out further on the backside of that.

MODERATOR MILES: Bob, you have a question on that?

MR. DACH: Yeah, I have a question, too. This is Bob Dach with Fish and Wildlife.

At the one, two, three, four, five, sixth box

there between three years and two years out, when you do that scoping effort again, do you guys anticipate under this process that there probably wouldn't be any additional issues identified at that time and this is just an in-case thing, or do you anticipate that that two years would now fully inform the scoping process and the issues would be clear?

MR. CANADAY: We would believe in the greatest percentage of the licensing processes that the issues would be known; the issues would have been addressed. But what this does is provide the doorstep of the formal NEPA process and provides a comment period.

MR. DACH: So if --

MR. CANADAY: And it's actually -- again, and we've tried to parallel process. Comments on the draft license application. And in many cases the comments to a draft application, as it critiques the information that's developed, is in a sense very much like a comment would come in for a NEPA scoping of what needs to be addressed and how it needs to be analyzed.

So we think you can do both of those at -- I mean not one, one comment fits all, but you could be developing those comments jointly. So that's where we've tried to reduce the telescope of the process, by doing it there. And we think if you've done the other stuff upfront, that

most of the issues will have been known and will have been addressed.

MR. DACH: Okay. Okay.

MODERATOR MILES: Geoff.

MR. RABONE: Geoff Rabone, SCE. Thanks, Jim. I think that helps. I realize now that this -- this additional year after -- between the three years before a license application and the two years, that's probably primarily AIRs. And that during your two years of studies, when you started the second stage at the five and a half years, you're having those semi-regular meetings to review your results. And I think that would help make sure that you're making progress and everybody's on the same page.

MR. CANADAY: It also contemplates that your license application can be fine-tuned based on the comments. Now you have basically a good part of a year rather than what typical happens, two weeks before you have to turn it in. You have an opportunity to fine-tune that document, add, you know: Oh, we should have added this.

And so that when the document comes to FERC I think it will be a better document for the Commission staff to work with. We think it will be a better document for the parties of interest when it gets there. And we believe that you will not have other -- you will not be asked for additional information from that point on, I don't think,

unless the Commission staff finds a hole.

We also contemplate with our process that Commission staff begin participation, assigned to this project at 6.5 years out, and they don't wait until an application comes in to have staff participate. We see the benefits of FERC's staff, and we think we've greatly benefitted in the processes in California where FERC staff have participated.

And I realize it's a resource issue, just like we have resource issues, but I think we would go hand-in-hand with you to Congress, if necessary, and argue for funding for FERC to implement this process, because we think it's necessary for the whole process to work.

MODERATOR MILES: Brett, you had a comment?

MR. JOSEPH: Yeah. Brett Joseph with the National Fisheries. You started out -- actually I think the other Jim started out mentioning that you were looking at this process as changed from the traditional licensing process for improvements, from the traditional license process but not to replace the ALP process.

Given the proposal to start at an earlier point, in some of the -- what you've identified as being the fundamental problem, the lack of adequate information early on in the process to informed decisions, how do you see -- or do you see any effect on when the decision would be made



or the proposal would be submitted to FERC to pursue an ALP process in lieu of the traditional process?

In other words, would that decision point on the selection of process likewise have to be moved up, or would you contemplate that, for example, that additional year of study would happen in all cases prior to an election regarding two alternative pathways?

MR. CANADAY: I would suggest that the decision by the licensee, the business decision by the licensee be made prior to the issuance of the NOI or at least consultation with the parties of interest to see, because the development -- or to enter into an ALP, at least as I understand it, that isn't just the licensee making that decision. That's also the parties of interest who are going to participate in the process.

And an ALP process, I would see there would even be greater connectivity with the parties in resource allocation of meetings and things than was even anticipated in this possibly.

So, anyway, we believe that that business decision has to be made by the licensee prior to the issuance of the NOI. And we would assume that they would have vetted that with the parties of interest prior to that.

MODERATOR MILES: Okay. Any other questions for

the State? Comments?

Yes, please.

MS. BEIHN: I just have a comment about the beginning of the consultation. I like how they have at the 6.5 years that you're including the tribes in that consultation. We need to start from the very beginning to know what's coming.

MR. CANADAY: (Nods head.)

MS. BEIHN: And I didn't see that in the other proposals. And I appreciate that that -- you know, that is a good thing, a positive thing for the tribes.

MODERATOR MILES: Okay. Any other comments, questions?

Why don't we have our first speaker? Bob.

MR. DACH: Yeah. One more, one more. Did you guys anticipate settlement negotiations or settlement discussions in this process?

MR. CANADAY: We anticipate that there is a possibility for settlement. One, that's again a decision made by the licensee, if it's in their interest to achieve a settlement. And it's also in the interest of the parties. And so, again, year 3 to year 2 would provide you an opportunity to entertain settlement. And actually before that, but I mean that's where I think where you have a clock running on you and the licensee has a clock running

on them because they have an application that's due. But even at 2.- -- or two years out, you could still entertain.

I mean like I think one of attorneys says, most settlements occur on the thirteenth hour. So you know until FERC issues a license, I think a settlement can come in.

MODERATOR MILES: Okay. Then why don't we have our first speaker. Daniel Cardenas.

MR. CARDENAS: I did not prepare comments. I was trying to prepare on the way, but I will make my comments and then I'll present written comments by the deadline.

Member of the Pit River Tribe, and I'm a Member of the Pit River Tribal Council, for three years. If you're not familiar with the Pit River Tribe, we occupy and have occupied the northeastern corner of the State of California for thousands of years. And that area includes the Shasta, Lassen, Modoc, and Siskiyou Counties.

Our area where the largest water, the largest river in our area is the Pit River, which is really the Sacramento River. The start of the Sacramento River actually originates in my territory, Hammawi in the Warner Mountains, and so this process is really important to us because it affects us directly.

Pacific Gas & Electric operates a handful of facilities along the Pit River and the Hat Creek. And so

we have not always been part of the process, with the Hat Creek process, but we were a little bit more involved with the Pit processes.

But still my first comment would be that we -- if we're going to make this process more faster and more efficient, then we need to also think about making the licenses not so long. Instead of 50-year licenses, what I think they're renewing to now, or 45-year, or whatever it should be, 15- and 20-year licenses, if even that long, to make up for changes in the environment. Which, remember when these projects first came through, there was no regulation, so they just come in and build their project without any mitigation, without any caring about us, the Tribal Members who actually are living there where the projects exist now.

So we're glad and I'm glad to see the State's plan, which actually says "tribes" and includes tribes, separating and differentiating between tribes and stakeholders, which I think is a good, good start.

And the other thing that I've seen in the National Review Group is in their comments or regarding the public comments that have been made, I guess, about their -- about this process, was although their plan does not specify in detail, "the proposal recognized that the tribes may exercise independent regulatory authority in areas such

as water quality and cultural resources." And it should say, "should," that they do exercise these regulatory authorities.

And what's most important to me is the cultural resources. And so if we are autonomous, if we're sovereign nations that exercise regulatory authority over our cultural resources, then that should be followed through.

Like I said, I'm not an attorney. I'm not an expert in these regulations, so I'm not really familiar with what it talks about in terms of cultural resources, but with our experience with Pacific Gas & Electric is that our cultural resources have not been in the past very important. And, like I said, they have been an afterthought in this whole process.

And so I'd like any kind of regulations to be to strengthen tribes' positions in terms of their cultural resources. And I'm glad to see the State's comments in terms of regulations and license requests from not only the State but from tribes as well, is that we're part of the process throughout the whole way; and that we should not just be stakeholders with commenting, the right to comment but also the right to request -- not just to request specific studies but to make sure that it's followed through.

And hopefully the FERC will recognize that

whatever we request, it's not frivolous, we're not trying to stop the process, but we would like our concerns, just as if we were a state, which we're on the same level as states in sovereignty to request a certain study, that it be done. And in our experience that hasn't happened, and so hopefully these things will get incorporated.

Another thing I wanted to request is that, and like I had mentioned earlier, the tribes being missing, at this point, from the beginning of this process till now, the states are -- I mean the tribes are really, as the states mentioned, the states weren't part of the process. The tribes weren't a part of the process either. And it directly affects, directly affects every tribe.

Like I said before, the tribes, wherever these projects go in or are already there, affect a tribe. Whether the tribe exists now or it still exists, it affects a tribe or several tribes. And so, you know, I would like to have seen a tribal proposal.

In looking at the rulemaking schedule that's on there, it's kind of tight. I mean it's really fast. So I'd like maybe to lengthen this out, because already it looks like on December 10th, 11th and 12th, post-forum stakeholder meetings are to be taking place in the capitol, in Washington, D.C.

I don't know if that's just from FERC's point of

view on what to do next, or that includes -- it looks, though, when I read it, it looks like it includes stakeholders themselves, but that's kind of fast and quick. And so I understand this administration wants things done fast and quick, but again fast and quick is not always the most efficient or cost-effective.

And so I'm not so much concerned with cost, because the tribes do pay a cost. We've already paid a huge cost. We paid the biggest cost so far in this whole process in the history of the loss of our sacred sites, the loss of our cemeteries, the loss of our homes. So we've already paid that price.

So I'm not really concerned when a utility comes and complains that these plans are too expensive. Again, they're not paying for it. The ratepayers pay for it eventually. So they find a way to pass on those costs to everybody else, and so that's never a concern in my mind.

The concern is that the studies get done properly, no matter how long they take, and that they are looked at in a process where they're not being hurried. Whatever experts that the state or that FERC hires to look at these documents, to make sure that the studies are being done correctly, that they do it in a timely fashion, not too long, but not in a fashion where they're hurried too much. And this looks like they're being hurried along.

And so I'd like these, again, I like the State's proposal in terms of whatever is on paper, the process shouldn't be doubled, because that's usually what happens with planning, where it's not so -- it's more flexible in terms of commenting, in terms of a process.

And I'd like a process that if we have problems and the states, looking at the states own processes, of all the three proposals, I think is the best so far. Not that it's perfect now, but it can be modified later and throughout the process, to the extent it's a work in progress in terms of being able to meet with FERC, or call somebody up on a telephone conference, or just meet with them in person if we have a dispute.

And my concern is that current way, the way it happens now, whether it's legal or not, but the way that we've experienced the process, through this collaborative team effort, is that if the tribe participates and requests a study to be done, the utility says yes or no. And most times they say no. And there's no process that we've -- there probably could be, there probably is a process, but we've never been notified of what the process is to appeal those decisions.

And we need a process where the agency, the tribes, and the stakeholders have a direct contact with the FERC to say, hey, the utility's not doing what they're



supposed to or they're not in good faith discussing these types of things. Excuse me. So what can they do about it, and so to prod them along to doing the right thing. I think I like this process that the State is moving forward, where it would allow FERC to have more involvement.

And the papers here say that FERC has really no involvement in the initial parts of it, but they should have involvement. And one of the comments before was that FERC had -- one of the people from FERC said that in the letters, initial letters to the utilities, the licensees, is that you should contact these people.

But seeing how FERC is the federal agency, I think it should go through FERC. And tribes are used to federal consultation. The gentleman from EPRI said that this is not consultation, tribal consultation, government-to-government consultation.

Once a licensee files its notice of intent we should be contacted from FERC to meet with FERC since it is the agency that the license is coming or -- they're the ones that give the license, to say that the licensee would like to renew their license, or they're not renewing license, or somebody else wants that license, and meet directly with us as a government.

And to make the progress, you know, grease the wheels of the process so that the utility in good faith and

-- "consult" is a bad word probably for this because when we look at consultation we're, in our minds, we're thinking, you know, government-to-government consultation. And this looks like an initial consultation between the utility and all the stakeholders.

So I'd like to see a process where the FERC contacts the Tribe, sets up meetings with the Tribe in our area where the project's going to be and initiates those contacts. Whether it's a site visit, whether it's -- initiates those meetings between the licensee and the Tribe, because again there's nothing that says the licensee has to consult with the Tribe. There's no documents. They're not a sovereign. They're not a nation or an agency. They're just a company. So a process like that where -- so that we're understanding that FERC is involved from day one with us.

It seems like what's happening now is, you know, let the companies consult with the tribes if they want, or if they know about it, or if they know there's a tribe there. And then throughout this process, you know currently where our issues get put under the table or they don't get resolved until two or three years down the line.

And I'd like to use again, all these have talked about, putting all the issues at the beginning of the process, which is good, so I think at least that will be

changed from the current process.

And so for now I guess those are the only comments that I have. I said I'll issue my written comments, and that's for the Pit River Tribe. But, like I said, I've always -- I'd be more inclined to support the State's, the California Modified Traditional Licensing Process with changes, of course. But I'm glad that they recognize the tribes are more than just stakeholders, that we're sovereign governments that need to be consulted in a nation-to-nation process.

And so -- but I'd still like to propose that this process be extended for the rulemaking so that it could include tribes in an official way. Maybe a tribal -- tribes need to get together to issue their own proposal, or something to that sort. Because, again, I wasn't here at the beginning of this process when this was first initiated, and I don't understand why at that time the tribes were not included.

The National Review Group concluded that the corporations, the utilities, and I guess some of these environmentalists, nongovernmental organizations. And then the other proposal was from the federal agencies. I guess it was assumed because it was mentioned that the Bureau of Indian Affairs was acting on the tribes' behalf.

They do have a trust responsibility, as all

federal agencies have trust responsibilities to tribes, but that doesn't mean that they necessarily act on the tribes' behalf to the tribes' best interest, as can be with seen with our trust, with the trust responsibility in Indian Accounts and the BIA has mishandled the tribes' moneys, Tribal People's money. So they don't necessarily always work on the tribes' behalf, best behalf.

So I think that was the assumption, was that we were at the table because the BIA was at the table or the Department of Interior was there. So that's not the case. And so that was misguided. And so I'm hoping that we would have a more -- we would be at the table as these discussions go forward.

Hopefully the FERC will invite the tribes to their discussions back in Washington, or wherever they have them, as this proposal gets drafted and for the spring, I guess, when we'll talk about it some more.

So, thanks.

MODERATOR MILES: Thank you.

Our next speaker is Tom Dang.

MR. DANG: I just have a question. We received the NRG proposal a few months back. And when I went through it, one of the items that I was kind of concerned about, Daniel and Cathy mentioned the tribes either here in California or all over the state just don't have the

resource and staff to deal with projects.

And in the NRG proposal one of the items that was proposed was to develop cooperating agency agreements. And it does go on to say, and I'm quoting here, "As provided by such agreement, such cooperating agency procedures will require time and resources by those involved and that they would be responsible for collecting and compiling information in its possession relevant to the NEPA review."

And I'm just concerned that by having such requirement in the language that either the resource agency or the tribe won't have the resource to work on it or to deal with the studies, or whether they would like to participate in meetings or dispute resolution, or whatnot. They won't be able to participate on those proceedings.

And my thought is if and when they do that they would be -- you know, the licensee would make funding available for them to participate, if they choose to.

MODERATOR MILES: Any other comments by any of the other guests?

Yes, please.

MS. BEIHN: I just want to say to Tom's last comment that the Southern California Edison Company has offered mileage for our communities to attend the meetings, so that is a real plus for them because it's hard to get to meetings sometimes because we have in rural areas.

But what I wanted to say was that these processes sound fine, and I do like the State's proposal the best, I think. They need to allow for the tribes to participate right from the very beginning. That's really important because we're so far behind always in all these processes, not only with this process here with the relicensing, but other things that go on throughout the state.

It seems like a positive effort on all the people's part that put these proposals together, so I'm pleased with that, too. But I think the timelines really have to be looked at carefully because we've already run into some timelines that have -- you know, some things that have been hindered because of certain things, and it probably wasn't expected in this process. So already we're going to be behind on some things and have to play catch-up eventually.

I wanted to also let the -- just comment about some of the things Daniel said about our people and how we feel about the actual land that these hydro projects are dealing with. They're our lands and they're our people. And a good percentage of these projects that have the water covering our arch sites have cemeteries under them. Those are very real issues to us.

We need people to really see our viewpoint on it and see -- you know put it in your own perspective as far

as where your mother or your father or your great-grandmother is buried, how would it affect you. And that's

what we'd like you to look at it, that way. How would it affect you. This is how it's affecting our people.

Also I think the licensees need to recognize and acknowledge more of the responsibility for the cumulative effects and the causes that are going on now from past, maybe past decisions that were made without them and they took over later, but still the problems are there. And through the mitigation processes, maybe we can work something out there for our cultural resources. But those are probably the highest thing on our priority list, is our cultural resources.

Thank you.

MODERATOR MILES: Well, -- yes.

MR. CARDENAS: Can I just say something real quick? I'm glad that Tom in his comments made that comment, because that's something I had forgotten. But that's really important.

Like today's meeting, I came on my own behalf, on behalf of the Tribe because my Tribe doesn't have the resources to provide to send me to these meetings, or to send any of our other officials. As I say, I am an elected official with my Tribe, but -- and that's the sad state

that some of our tribes are in and that's probably why there's a -- it's perceived as a low turnout.

Like I said, there are over a hundred tribes in the State of California. And it's not necessarily because they're not interested, it's because we have a lot of things to deal with and we don't have the resources, like Tom had said, to deal with this.

And this is not only very expensive, but the time it takes to attend all the meetings, to go to all the consultations. Had there not been a consultation in California, the closest would have been Tacoma, Washington. Then our Tribe would not have been able to go to this meeting because I couldn't afford it, me personally.

And so I'm glad that Southern California Edison provides some sort of funding to the tribes in its area, but our licensee, Pacific Gas & Electric, does not, and so -- and they've said they don't have the budget, and different reasons. But it should be mandated.

We're not making money off this. We're trying to protect our cultural resources, and so we're not profiting off of attending meetings. And out of their million -- I think in our area, one of their projects cost \$11 million to relicense. So it's a small amount if you include some travel to the tribes.

The Pit River Collaborative Team has had meetings



all throughout the northern part of state, not just in our area but in Redding and Sacramento and even in San Francisco. And our lack of attendance at those meetings is partially because of the lack of funding. We can't afford to send our attorneys. We can't afford to send ourselves. And so we don't sit at the table. And so I think that's really important.

I think it probably needs to be a part of the regulations is that a mandate to the licensees to pay for the tribes' representation at the table, and either in the form of travel reimbursement or something to get them there. Otherwise, you're not going to get the participation at the initial stages.

And it's somewhat my view that as, well, you're profiting off it, but we're not, you know. We have a lot of things on our plate, and these licensees are not the only ones that are profiting from our land. Timber companies, and state agencies, federal agencies that we have to deal with all the time. You know, we just can't deal with it. And we don't have -- like I said, we don't have the capacity or the employees. We do have environmental employees, but they're dealing with a lot of other stuff.

So I'd like somebody to step forward, whether it's the FERC or whether it's the Bureau of Indian Affairs

to do that. I know that was an expensive endeavor. But I think, again like I said, the tribes have paid, we've already paid for that a hundred years ago, 80 years ago. Eighty, 90 years ago when these projects first came into our areas, we've already paid more than our share.

And so I just wanted to thank Tom for reminding me of that.

MODERATOR MILES: Okay. Mona, did you have a question or a comment?

MS. JANOPAUL: Yes. I had a question. Mr. Cardenas, yes, you gave me a lot of things to think about. I need to speak up, thank you. Mona Janopaul, Forest Service.

You've given me a lot of things to think about, so I'll take the most recent one. Are you suggesting that for licensing processes, whether it's a collaborative or traditional, that meetings that the licensee holds need to be near the project area or, in the alternative, provide resources to the tribes to -- is that something that you think should be a recommendation on the Commission's part, maybe in our box zero, or do you think that should be somehow required when a licensee applies to use the ALP?

I'm just trying to understand --

MR. CARDENAS: It should be required.

MS. JANOPAUL: Required.

MR. CARDENAS: You know they do meet in our area sometimes. But my area, just to keep you -- it stretches from Mount Shasta to Mount Lassen to the Warner Mountains all up to almost Oregon and back. So it's -- we call it the hundred-mile square. It's a 10,000-square-mile area. And so -- it's 150 miles across. And so even that, even if it was held in our area, it would -- it's not hard to get to, but there are some obstacles there.

And so if the licensee or FERC hold these meetings within our area and all the -- within all the tribal areas, or if it's in Sacramento, because they want to be close to Fish and Game and to the State, that we be reimbursed for our travel expenses. Because we've had meetings in Sacramento and San Francisco, where PG&E is located. They've had them there. And so it's really too difficult for us to get there.

So, yeah, there should be a mandate, there should be a requirement that the licensee, just like they're paying for the studies, they should have to -- and it's a small percentage compared to what they're paying for the studies.

MS. JANOPaul: And I seem to also understand from the previous time that you spoke, you were suggesting that separate scoping meetings need to be held for the benefit of whichever tribe or tribes may be involved.

And I'm wondering are there other things along the way where you might be interested in separate notification or separate meetings either from the resource agencies, or the Commission, or the licensee?

MR. CARDENAS: I think in terms of the scoping, it's just from a -- I understand the logistics, not always can the agencies do that, but I think it would be nice because, as a tribal official from my government, it seems that we just get lumped in with, like I said, the bikers and the -- I'm a biker and I'm a hiker, too -- but we just get lumped in with the rest of the public when we make our comments. And it seems we're not given the same weight as -- we're given the same weight as everybody else and sometimes less, but we should be given more.

And like today's meeting, I like that. The time was given specifically for tribes, and the same thing with the scoping. It's not hard to have a separate meeting. And some of these meetings happen in the evening. When they happen during the day, we do all of our business during the day mostly, so it would be easier to have a meeting in the morning with the tribes. And then you have a public meeting in the evening with the rest of the public. And it's not hard to do that.

So -- and it wouldn't cost you more because you've already rented the space, and you know the logistics

of it. But it would be nice if we were kind of separately -- not separate but -- an idea of separate but equal -- but separate and given a little bit more weight towards our concern because, like I said, our concerns -- or deal with our culture. The culture is an expansive topic. It includes our environment, the water, and everything else, and cultural resources. So just a little bit more forethought would be nice.

MODERATOR MILES: Bob, did you have any?

Ann. Okay.

MS. MILES: I just had a follow-up question on scoping meetings. Normally we like to have the scoping meeting during the day that would include the federal and the state agencies and the tribes, and then in the evening for the general public, anyone else.

And I'm wondering if you all feel that that's sufficient to participate with the other federal agencies and the state agencies and the tribes all together to discuss issues.

MS. BEIHN: Actually the forum that we have today with all the agencies here, that's exactly what we need. Because later on this afternoon we can give you some ideas on how to rectify some of the mistakes we're making along the way with the lack of communication, some of the things like you're saying, meetings during the day or meetings at

night, whichever.

But we need to have communication with these people at the table now because they don't understand our tribes and they don't understand our tribal issues and that's -- the close meeting that we're having today, that's what will accomplish that.

And if you've been having other meetings, we don't know about it. So that's the lack of communication I'm talking about. We need to know when and where you're having these meetings.

MR. CARDENAS: And to comment to Ann's comments, I mean that's part, that's like 90 percent of the issue is if we're -- we feel as though we're a part of the process and we have some type of ownership in the process, which like we -- then we're less likely, and especially from my Tribe's point of view, we are less likely -- we're more apt to be more cooperative in terms of the studies and the rest of the process.

It's because we haven't part of the process where we get frustrated and we're not as cooperative. But I feel like if it was done that like, a simple thing, a simple solution to rectify the problem is if we had a meeting, yes, with all of the agencies and the state in the morning, or whatever, however you do it, but specifically with those people, then we'd feel as though we're -- we feel like

they're listening to us and they take us seriously. And then we would be a lot happier. We would be a lot happier than we are now. So I think that would go -- that would be a big step towards -- it's not going to solve everything, but it's going to make us a little bit happier.

MS. MESSERSCHMITT: To answer your question, Ms. Janopaul, about scoping issues, I think it's fundamentally simple -- I dislike that thing [referring to the microphone] -- when -- I lost my train of thought. Okay.

You have -- these are players at the table. You've got agencies that are part of government, government systems, and then you've got private companies that are business-oriented. Okay. You're trying to mix in tribal governments and nontribal governments, tribes that are not federally recognized. So you've got two different entities.

On top of that, in dealing with the tribes, Enterprise doesn't do the same -- we all have commonalities, but Enterprise is going to have different concerns, different issues than North Fork Rancheria, who is going to have different concerns and issues than Cortina. So talking to one tribal entity doesn't mean you've talked to all the tribes. You know, one tribe doesn't speak for another.

And you say, okay, what do we then. Well, the

importance of having these scoping meetings with just tribes and tribal governments is because, first of all, the issues that we are concerned about that we address are sensitive issues having to deal with antiquities, burial artifacts, cemeteries. There's a wide range of issues that we are concerned about, not one specific entity. And you can't lump those into cultural resources because they don't all fit.

And so a lot of times what the agencies try to do is say, okay, well, when we get to cultural resource issues then we'll bring in the tribes. But we've been left out of everything else. And some of those things directly impact tribal governments or tribes in general.

So with regard to the scoping process, yes, I think it has to be separate and definitive, where tribes are allowed to come to the table with these different agencies. And the biggest thing that I have noticed, and this is why I personally like the State proposal much better than the other two is, first of all, they did include the tribes.

And I think part of the reason they did that, and correct me if I'm wrong, Mr. Canaday, but you guys have a lot of experience dealing with ALP and working with the tribes.

MR. CANADAY: That's right.



MS. MESSERSCHMITT: So this is not a novel issue or a novice issue. They're using their experience and saying how do we incorporate these people because we've left it out in the past and it's stymied the process, so let's see how we can streamline it. So it's an education process.

And when you're talking about dealing with tribes, I think a lot of times we don't all speak the same language. Just with regard -- Mr. Cardenas used the word earlier, "consultation."

There's a lot of people who have a definition of "consultation," and they're not all going to be the same. You know, just dealing with Forest Service on the Sierra National Forest and the Klamath National Forest, they've got two different definitions of "consultation." And that's in one agency.

So I think some kind of terminology has to be a basic, a basic understanding, so everybody is speaking the same language when you come to the table.

And I think Mr. Canaday had mentioned earlier a reinvention of the wheel. One of the things that folks didn't start out with was how did these groups, where did they begin. You know, did they look at successful relicensing projects and say this is what has worked and how can we incorporate it, or did they just say, okay, we

need a new process, let's go.

What was your background. Where did you guys start. Because I think all of these issues bring together the fact that you can't have -- you can't pull the tribes in as an afterthought, at the back of the process. And I think that's what people have been saying here is we need to be in the front of the process, not at the end.

Does the answer your question about scoping?

MS. JANOPAUL: Yes. I'm still thinking about Ann's question, and I think you've answered it a little different than Mr. Cardenas. You said, yes, you think there does need to be a separate scoping meeting just for the tribes. And I definitely heard you about the holistic approach and a prior approach, just like we are talking about having NEPA before the FERC licensing.

We have been talking about at an interagency level about the need for tribal consultation during that early prefiling stage.

My question back to you in trying to parse through, is there also -- and we did hear this at the Atlanta meeting -- a confidential nature to some of your interests, such that that might also support the idea? We definitely heard about that in Atlanta, that some tribes have interests of a confidential nature that they do not wish to discuss at a public scoping meeting or necessarily

have addressed in a public document like NEPA. And is that a concern to you or not?

MR. CARDENAS: Yeah. It's like she had mentioned, our cemeteries, our churches. Everything that's sacred to us is involved within those project boundaries of mostly FERC licenses in our areas, almost all of them. And so it's the location of my ancestors, my family's graves. You don't want that out in the open, because in my area we have a big problem with grave-digging, grave-robbing. That's what it is. And so once it's out there, then they're going to go -- people are going to go out on a weekend at night and go and dig up my family's graveyard.

So it happens immediately, so that's why -- on top of being a federal government -- I mean a sovereign government, just because we are that sovereign, we should have our own meeting. But then you throw in the confidentiality of the nature of the information that's being spoken about, then that even makes it -- even warrants more of -- it just cements that whole idea.

I had never thought about that, but that's -- that's what you just asked about it, and that's even more of a reason why to have a separate meeting with the tribes.

MODERATOR MILES: Over here. Yes, please. Go ahead.

MS. BEIHN: Well, in the process we're working on

with the Edison Company we have worked up with the Forest Service being included a confidentiality agreement with our working group. And it seems to be the thing to do. You need to have that because, like Daniel said, in our area, they don't wait till nighttime. They do this right in the daytime.

We have pot hunting going on all over the place. And when we go out to do a survey or go see a site, we're real careful about that site. And sometimes we don't even want to tell the Forest Service that we found a site because we don't want it marked on a map. We don't want it flagged because of what can happen to it. We're real careful about that.

A lot of the sites are obvious and the public knows all about them. Well, we can't do too much about those sites, but when we find new ones we're not advertising it to anybody, not even the Forest Service.

MODERATOR MILES: Gloria.

MS. SMITH: Gloria Smith, Interior. I actually have a question because, as Mona said, this is the second time we've heard about this really important issue of there being a lack of confidentiality with respect to your cultural resources.

I'd like to hear in your comments whether or not this is a flaw in the NHPA, the National Historic

Preservation Act, or this is actually the way that we are implementing it at FERC or licensings.

MR. CARDENAS: I think it's a flaw. I don't think -- I think in the implementation of it, because I don't think it's a flaw maybe in the actual law. It's just the way it's being handled because, like she said, we're even reluctant to tell where our sites are to, say, PG&E.

And they're going to say, well, our issues aren't valid because you're not telling us where they're at. And so it's a direct miscommunication between the two parties. And so when the licensee has the -- we've signed agreements with them even when the licensee says they're going to monitor our sites, that they're already known, that they don't do it. And so it's still their direct responsibility because it's technically their property. They're not monitoring our sites that are known out there, and people go and rob the sites.

And so I don't think it's the law or the regulations that are at fault. It's the actual -- the policing of it, the enforcement, making sure that they're actually following what they say they're going to do. That's where -- in our situation it's not happening. They're not doing what they say they're doing.

MS. SMITH: And that's basically the same thing we heard in Atlanta, that really it isn't a flaw in the

law. It's sort of the way we haven't actually been doing it correctly in FERC or licensing.

I would love to hear in your comments a better way, because I think it's in the purview of this rulemaking to improve that. You know, there's no question that we couldn't do that.

MS. BEIHN: I was going to say that in the PG&E's HPMP, they address the sites and monitoring the sites, but there isn't anything in there that specifically says how they're going to do it.

So that's our concern, how are you going to monitor these sites. You know, tell us what you're going to do, because it just gets left after that process is all over with and we're done with the HPMP, you know where do we go from there. Who is going to see that these things get done? That's our concern, is that, you know, you can come up with all kinds of ideas and put them in there, but who's going to see to it that they all get followed through and who's going to see to it that those things are answered.

MS. MESSERSCHMITT: I don't have the stack of papers that FERC sent out when they sent the questions and all that, so give me a little leeway here. But it goes back to why it was so important for these, IHC and the NRG, to include the tribes at the onset prior to establishing

this proposal or while they were doing it.

Because in the IHC proposal it talks about cultural something in there, and I'm sorry to be vague. I had it in my notes, and I didn't bring it. And if I can locate one of those after, when we break for lunch, I'll come back with specificity.

Because I called the Forest Service and I said, "When you're talking about this particular -- this particular language, what does that mean? What does it cover?"

Well, by definition from the Forest Service, it only covers the area. It does not cover anything that is found there. It doesn't protect anything that's found there. And to me that's a big flaw in the IHC proposal. So, like I said, bear with me. I will be specific if I have time this afternoon, because that was one of the big flaws I saw in the IHC.

MODERATOR MILES: Brett, do you have something?

MR. JOSEPH: Yes. Just a couple of things.

First of all, Brett Joseph for Department of Commerce.

On the process part of it, we have -- my agency has a very strong interest in these type of separate scoping meetings with the tribes. It would go a long way towards solving the same problem, from our end, when you talk about the differences between the tribes and their

needs and the need to try to get everyone at the same table, the idea of us -- or we just don't have the resources without major changes at the political level. We don't have the resources that would allow us to separately go out to each tribe.

And so to the extent that this type of meeting allows us to fulfill our responsibilities, to hear from you and to have that dialogue that accounts for the fact that each tribe's interests are going to be separate, we strongly favor that.

And related to that, in the process that we're looking at developing here, we're supportive of having some component of that built in that would formalize the tribal input into the process, recognizing that they're not part of the general public. That kind of mechanism is not currently in there, the problem of resources and funding to get representatives to be able to participate. And we recognize low turnout doesn't mean lack of interest.

I had another thought there, but I'll just leave it at that.

MODERATOR MILES: It's 12:20, 12:25. Would this be a good time to take a break after we take this gentleman's statement and then get back after lunch?

What we'd like to do, though, when we get back after lunch is to identify those very topics that you think



are really important for us to discuss, to engage in. So if you could think of topics that you might want to talk about, then what we'll try to do is come up with a list of topics and try to engage in a discourse on each of those topics.

Okay. Before we return, this gentleman over here.

MR. GARCIA: Doug Garcia, Interior.

Looking at when I initiated consultation -- or had sent notice to the tribes regarding the meeting, I looked at the timeframe that we have. I guess there's 2000 to 2015. I'm looking at those relicensing projects that are within California, they are like about 154. So there's a pretty big platter that's being put out on tribes' plates, on federal agencies' plates.

And there's going to be a lot of projects working concurrently and putting pressure on resources. Looking at that also within Central California Region, we have about 54 tribal governments, but in conjunction with that we have individual public domain allotment tracks, where individual Indians reside on those tracks. And those lands are under federal trust and those lands are located within and around BLM lands, United States Forest Service lands, state lands, and, as we all know, within the counties.

And so those tracks also are affected directly by

these -- by the proponent in the aspect that if you have a special-use permit issued by the Forest Service to an individual operator diverting water to, I guess, a diversion, and that water is not infiltrating the aquifer anymore and so it's affecting springs, that individual tribe or PDA track, public domain allotment, has used for its subsistence, for whatever other purposes it deemed necessary for that purpose.

So the full picture isn't really known by FERC, but is felt by Interior.

And also the other aspect is that these other federal agencies, the BLM and Forest Service, make decisions in relationship that have bearing on those tracks of land. And so the consultation process in relationship to those federal agencies making decisions for that forest has bearing on those tracks of land.

So as those other federal agencies have responsibilities to look out for those Indian Trust assets, water, fisheries, cultural resources, the effects haven't really been assessed adequately and those things need to be looked at and schedules need to be put in place in relationship, so there should be some collaboration by FERC working with the federal agencies, looking at Indian Trust asset issues and trying to put together some analysis to help guide those resource initiatives that manage those

tracks.

MODERATOR MILES: Okay. Well, why don't we then break for lunch. It's 12:25. Want to get back together at 1:30? Is that okay? All right, 1:30, please. Thank you.

(Luncheon recess taken from 12:25 p.m. to 1:42 p.m.)

MODERATOR MILES: Let's go ahead and get started. Thank you for coming back, for returning. So what we'd like to do for this afternoon is to engage all of us in a conversation, a discussion about topics that you would like for us to address and for you to raise. So any suggestion on what the topics could be for this afternoon? Any thoughts?

Yes.

MS. BEIHN: I just would like to talk a little bit about notification.

MODERATOR MILES: Okay. Notification.

Anything else? Any other topics?

MR. SMITH: Something like scoping meetings. Something like scoping meetings for primary members.

MODERATOR MILES: Okay.

MR. CARDENAS: I think one was the Solicitor's Office talked about the enforcement of whatever the agreements are, how they're going to enforce them, because a lot of the time the Pacific Gas & Electric says, well, we

don't have the money to enforce. We can't afford to secure your cultural resources. We can't have a security guard securing those spots, to put up a gate or a fence.

And so I think enforcement and then how do you pay for that. Where does it come from. Because I think it's possible for them to afford it, I think, but that's the excuse sometimes. Because they're paying for all this other stuff. Mitigation. So...

MODERATOR MILES: Are these enforcement after a license is issued or enforcement before a license?

MR. CARDENAS: Well, they're still -- it's probably after the license, but they're still -- they're doing it now. I mean it's happening now, so...

MODERATOR MILES: Okay. But I'm thinking of how we -- is that something that needs to be addressed during the process, before you issue a license. At what stage do you address that; is that what you're asking?

MR. CARDENAS: Yeah.

MODERATOR MILES: Okay.

MS. BEIHN: It could be a mitigation issue probably.

MODERATOR MILES: Mitigation?

MS. BEIHN: Um-hum. During the mitigation time period.

MODERATOR MILES: How to raise issues that need

to be mitigated and how to address them before a license is issued.

MS. BEIHN: Um-hum.

MODERATOR MILES: Okay. Any other thoughts? We can -- yes.

MR. CANADAY: We have a project that already has a license and it's got 20 years to run, is there a way that the Commission can address the protection of the resources. How would they approach an existing one.

MR. CARDENAS: That's exactly what I was thinking because somebody had mentioned that while this process we're discussing is going on, right now, currently licenses, especially in Pit River, the Pit River 3 and 4 projects are going through the licensing phase now.

So once this process gets done, they're probably going to get their license. And then what do you do for the next 30 years. Is there a process for amending. Can the FERC come back and say, well, now we've had new things happen, new regulations, we need to amend your license and now you have to do some more stuff like they had mentioned.

MODERATOR MILES: One of the things that we talked about this morning was engaging tribal nations early in the process and throughout the process. And one of the discussion topics that's in the blue book was settlements. How do you initiate or engage participants in settlement

discussions. So any thoughts you have on that. I mean, well, what are your views on how to engage the different tribal nations into meaningful settlement discussions.

Yes.

MS. BEIHN: Well, with the utility companies we're working with right now we have worked up a programmatic agreement and then also the Historic Properties Management Plan. And some of those issues are put into that so that the duration of the license, we have something to refer back to. We meet together and discuss these issues.

MODERATOR MILES: Okay. And then I guess when we get into that, we can say, well, what happens --

MS. MESSERSCHMITT: Yeah, we need to flesh that out after we --

MODERATOR MILES: Yeah. What happens --

MS. MESSERSCHMITT: -- because we have some good solutions.

MODERATOR MILES: Let's assume this is one party and this is the other party. And you've been spending two months, six months, however long in an unassisted format negotiating.

What do you do then when through unassisted negotiations you're unable to bring a resolution. Are there other steps that you could take. Third-party,

neutral.

Yes, go ahead.

MS. MESSERSCHMITT: Another topic, Mr. Miles, I'd like to see addressed --

MODERATOR MILES: Call me Rick, please.

MS. MESSERSCHMITT: -- is -- thank you -- is cumulative effects of these hydroelectric projects. Not to expound, but I'll give you an idea of what I'm after, is when a licensee says, okay, our project area is going to be within 200 feet of shoreline, okay. But they have to create roads to get into a certain area. That's outside the project area but it's part of the project. And that's something that has not been addressed.

MODERATOR MILES: Okay. Do you have that down, John?

Let's make sure we capture that correctly.

(Mr. Blair writes topics suggested by participants on easel sheets.)

MR. CARDENAS: I think -- what I've thought about before is the same thing as the project area, the area defined as a half-mile, quarter-mile from the actual facility. But it's just obvious that those facilities have a greater impact than a half-mile. And so it's to a broader project area.

I think the State within the PUC did -- they

considered the whole of PG&E's lands in our area to be the project, and their consideration is their entire land is like 50,000 acres surrounding a couple of these facilities.

The watershed is considered the project area.

Whereas, with the FERC it's only a little slice of area around the facility, actual facility. So I think that needs some more discussion, is a definition of the project area, a wider scope of it.

MR. BLAIR: The gentleman from BIA earlier this morning brought up the issue of allotment lands. Would that fall in the same category included --

MS. MESSERSCHMITT: Yes. Yes.

MODERATOR MILES: Is he coming back today, does anyone know?

MS. BEIHN: Yeah, I believe so. He's left papers.

MS. O'HARA: Yes.

(Sounds heard in room coming from outside the room.)

MODERATOR MILES: Well, that doesn't sound good. Sounded like we're next to a dentist, bzzzz.

(Sheets containing topics are taped on the walls.)

MODERATOR MILES: Dennis, did you have something?

MR. SMITH: Yeah. There was some mention this



morning about how to get the tribes and the tribal members involved in the process. And I know it's been difficult.

A lot of times we'll approach tribes and people do not have the time, the ability, the wherewithal to actually engage in a long-term process.

And so not only how to involve tribes in settlement agreements but how to involve them in the whole proceeding, period.

Dennis Smith from the Forest Service. Thanks.

And I know, not to presuppose a solution here, but I know way back when Washington Water and Power was doing Oxen Cabinet Gorge, they actually paid for a Trout Unlimited person to attend full time to represent all the environmental groups. That was -- they agreed to do that because they wanted to speed the process up. But there may be something in the regulations that might facilitate this issue.

MR. BLAIR: Dennis, you were absent. We decided the U.S. Forest Service was going to pay for that.

(Laughter.)

MR. SMITH: I think it might be a little more than just notification. Outreach.

MODERATOR MILES: How to best involve --

MS. BEIHN: Yeah, outreach.

MODERATOR MILES: -- tribal nations in the

process.

Yes.

MS. BEIHN: That would fall under what I was going to suggest, having a Native American consultant or liaison for these projects.

MODERATOR MILES: Okay. That might be a solution.

MS. BEIHN: Yeah.

MS. MESSERSCHMITT: Yeah, we have some good suggestions.

MS. BEIHN: We accept.

MODERATOR MILES: Okay. All right.

We have a new guest that joined us after lunch.

In case -- yes -- were you here before lunch? I don't know if you identified yourself for the court reporter, in case you want to say something during this afternoon's session.

MS. [SPEAKER]: No, I'm not going to say anything. I'm Carolyn.

MODERATOR MILES: Okay. Thank you.

MS. MILES: Rich?

MODERATOR MILES: Yes.

MS. MILES: Ann Miles, FERC. I thought I heard one that I don't see up there, and it was sort of how and where to address mitigation issues. I don't see it. Is it in something?

MS. MESSERSCHMITT: Oh, under settlement agreements. That's what happened.

MODERATOR MILES: No, let's keep that separate because that may be different.

MS. MESSERSCHMITT: It was discussed under 5, though.

MS. MILES: Okay.

MS. MESSERSCHMITT: It needs to be in 8.

MODERATOR MILES: Yeah, let's keep that separate.

MR. BLAIR: Could you say it again?

MS. MILES: How and where to raise and address mitigation issues.

MR. CARDENAS: What also was mentioned was are there projects that are successful, that have successfully -- tribes have successfully participated in and to use those as models. How did that happen. You know, which tribes, where, when, you know those kind of things. And then to maybe use that as a model for the rest of the tribes in the country.

Because I know there are some successful situations where tribes participate with the license or in the ownership of the actual project. I guess in Oregon is one of them that I know of. But I was trying to use that as a model for my Tribe in our discussions with Pacific Gas & Electric, but that never went anywhere either because

we're only dealing with lower-level people.

See, on one end we're dealing with the federal agencies who have the ability to discuss with us in a government-to-government situation. But when we're dealing with the utility, you're dealing with project managers or assistants, or whoever, not necessarily with the chairman of the board of their -- our counterparts.

And so to be able to discuss these kind of thoughts, we're dealing with the lower-end people. But using examples of tribal successes, but --

MODERATOR MILES: So establish a library of lessons learned or evaluations from other projects?

MR. CARDENAS: That's one of them.

MODERATOR MILES: Okay.

MR. CARDENAS: Like it says there, but also -- and the thought just came to me, is we've never met with the people who run the company. We've never met with -- we just meet with these lower-end people but never with the top. And why -- not in the agencies but within the utilities.

Like just recently on the Sacred Sites Legislation we met with the director of the resources agency, Nichols, directly. And so that makes a difference. It makes you feel a little bit better when you're dealing with the top people rather than the people who are on the

lower. So maybe -- I don't know if you can mandate that, but maybe suggest, recommend to the utilities when you're negotiating these type of things, we want to see the big-wigs, not just the --

MODERATOR MILES: How do you engage the right people in a process.

MR. CARDENAS: Because like in PG&E's case, one statistic I heard that wasn't in my area, I think 25 percent of that certain period of time PG&E's energy is created by hydro facilities and 25 percent of that directly comes from the Pit River. And so it's --

MODERATOR MILES: Yeah. That's a process -- that's something you encounter in all fields of dispute. I mean oil, gas, and electric. And one technique when you have a smaller group of parties is the use of a mini trial.

And while John's writing, basically if you were two parties, you have the two CEOs at the top of the table. Then for a morning or an afternoon or for a day each of you would have an opportunity to speak directly to the CEOs and they will really hear firsthand what you think about the other side's case and vice-versa. And so they get a better understanding and appreciation for what's going on. And, as a result, you tend to wind up with better negotiations.

Yes.

MS. MESSERSCHMITT: I know you had your hand up

first. If you want to go first I can wait.

MR. JOSEPH: That's okay.

MS. MESSERSCHMITT: Okay. I just wanted to say, I get a little nervous when we start talking about the right people and the right process. I think if you have a successful relicensing project it's not an issue of whether you have the right people at the table. Well, obviously you do because it's working, at whatever level they're at.

I think what -- and no disrespect intended. I guess what I'm trying to say is I think we just need an outlet, if the process isn't working, to get the people to -- the licensee to respond in a proper way in order to get it back on track, because it's in everybody's best interest to go forward instead of stagnating or litigating.

MODERATOR MILES: So if you have a process that's moving along and you reach a barrier, is it possible to bring in other people --

MS. MESSERSCHMITT: That's what -- yes.

MODERATOR MILES: -- to sit there and help you overcome --

MS. MESSERSCHMITT: That's just a thought. I mean --

MODERATOR MILES: That's almost a solution. I mean that to me is an option or a solution to the process.

MS. MESSERSCHMITT: Yeah. But if you have to

have a safety net, if you will, to get the applicant willing to come to the table. You know because if you rely on people to do it out of the goodness of their heart, it doesn't always happen.

MODERATOR MILES: It's almost what to do when you reach a barrier; is that a good way to --

MS. MESSERSCHMITT: Yeah, a process for that, I guess. I mean I hate to throw another process in the process, but --

MODERATOR MILES: How to address barriers. Okay, barriers.

Yes, Brett.

MR. JOSEPH: This may be somewhat related to that. I was going to suggest, you know, the deal with -- the point that was raised by tight timelines and the kind of steamroll effect that that may have in the event that timelines aren't working for the tribal issues and tribal participation.

And that in and of itself may be a cause of a dispute because there might be the intent if we're going to be moving forward without adequately addressing the tribal issues. So I mean I concur with that point, but I would also like to -- I guess that's one of the issues, how to deal with tight timelines. I mean --

MS. MESSERSCHMITT: Yes, that is one --

MR. JOSEPH: -- balancing the need for streamlining the process with timelines while adequately allowing for tribal participation --

MODERATOR MILES: That affects everybody.

MS. MESSERSCHMITT: Yeah, I agree with that.

MODERATOR MILES: I've been in situations where they're trying to get the right person to the table and we can't because a lot of conflicts, even within the industries, oil, gas.

MR. CARDENAS: Well, I understand because we've dealt with situations where we're dealing with project manager and he lies somewhere in the scheme of things within PG&E. And he's saying, "No, no, no, no," because I understand that he's on the line for budgets and he has superiors to report to, but we never got to know who those superiors are. And so we're just seeing this guy and his underlings, and that's it. And it's like there's never any justification as to why there's "No."

I mean it's part of this whole, what I had mentioned earlier, is if there's disputes and you have this dispute resolution, I prefer arbitration that's binding. But something that's going -- if something doesn't go your way, what do you do about it. Like it's already been mentioned, but who do you complain to, who do you appeal to when it doesn't go your way and there's no -- there's no



good faith. That's what I'm talking about, good faith.

MODERATOR MILES: And I think you mentioned earlier about the fact that you have protocol in place, and so how do you design a good protocol at the very outset of the process. Okay. So that you get -- even to the extent you might need some education and training for the people who participate in that, just as an aside. It's useful when people know that they're being positioned in the right space in negotiations as opposed to interspaced.

If I'm being interspaced and Geoff down there is being positioned in negotiation or discussions, boy, we're talking about right by each other, and we will never find a compromise.

But if we're evaluative, we can do that because we recognize that we're doing it and there are different techniques and approaches we can do. But if we're interspaced then we might take different approaches.

Okay. So -- but that's fundamental, and a lot of people just don't understand that.

Okay. We've got 12. Is that a good start? Shall we start? Do you want to go ahead and walk through them now?

MR. SMITH: Can I make one last comment here?

MODERATOR MILES: Yes.

MR. SMITH: Is this on [referring to the

microphone]?

MODERATOR MILES: Yeah, it doesn't amplify but it does go directly in to the court reporter.

MR. SMITH: You know a lot of times we find in our licensing, since some of these last seven, eight years, maybe even longer, that the original individuals who started out aren't there and/or they lose interest.

Now the agencies have people dedicated to the effort. They get paid to go to meetings to do the work. The tribes, that's not always the case. And so I wonder on this, maybe not in the regulations but when talking about internal tribal matters, whether you could dedicate an individual where they have a resource individual, and that's his job. I don't know, you know, whether the tribal councils even have permanent people that you could dedicate a person to, to follow the process through.

And if they need financial help, whatever, have a collection agreement with the applicant, or something like that. Because that seems to be a real problem in a lot of these relicenses.

MODERATOR MILES: Dennis, is that something that we can address in one of these 12, or should we keep it separate? Can we just raise it: How to engage the right people in a process?

MR. SMITH: Yeah, I think that's acceptable.

MODERATOR MILES: Unless somebody wants to add something right now, let's begin on 1. Is that okay with everybody?

All right. Let's begin.

Notification. Apparently you have a solution.

Only one solution.

MR. CARDENAS: I think the suggestion that was made earlier regarding when the FERC notifies the applicant -- or the licensees, however long out, when they notify them that, you know, your license is coming due, that they contact the specific tribe.

And the FERC should know which tribe -- I mean if they don't know now, then they should get that list together as to which tribes belong where. And then in that letter, there's no excuse down the line that the company can say, well, we didn't know or we don't know who to contact, that the information is there.

I don't know how, when I discussed earlier, as the FERC with the tribe, so maybe there should be a letter from the FERC to the tribe saying, you know, we're -- through tribal consultation, or whatever, consult with the tribe, that we're expecting this licensee to renew their license, or what the process is, or whatever, at the outset, so it's not necessarily the company dealing with the tribe, but it's the FERC dealing with the tribe as the

government to government.

MR. BLAIR: John Blair of FERC. A question for you, Daniel. Sort of what Dennis had just said a few minutes ago. From my own personal experience, and it may not be with your tribal representatives, but it becomes very difficult sometimes to identify the key person. And you call to talk to the tribal chairman or tribal chief only to find out there's been an election, there's been a change, and sometimes it's very difficult.

Do you have any suggestion of how we might key in, using your Tribe as an example, to find out?

MR. CARDENAS: Well, my Tribe's a little bit different than most of the tribes in California. Our situation is we -- like I mentioned before, I'm the Councilperson who represents the Hammawi Band of Pit River Indians. And so there's 11 bands in my Tribe, and so it's really clear when we deal with resource agencies that we publish a list every year that we send out, because our elections are yearly, all the representatives for each of the bands, cultural as well as councilpeople. And so then they're notified. We send it to, I guess, the Heritage Commission, and things like that.

But I think -- I don't know. That's a difficult question. And I think as long as you keep making a list of all the tribal offices, or something. It's hard because,

as a councilperson, when something's issued directly to the chairman, then it might not get filtered down to me because, depending on who the chairman is, he or she may not feel like I need to know that information and they might keep it to themselves.

Maybe it's going to take a little bit of work.

And I think each agency, that's their trust responsibility, to find that out, dedicate the resources -- with our help, but also to say -- to take the time to find out how each individual tribe is governed. Is it a council, is it a chairman, is it chief, or whatever. And then decide, you know, like a -- not a boilerplate, but just sending to the tribal chairman, to the tribal council, this is blah-blah-blah.

MODERATOR MILES: Ms. Messerschmitt.

MS. MESSERSCHMITT: There's kind of an onerous task, Daniel, not negating what you're saying. It's just that with our Rancheria, and tell me if that happens with your Rancheria, we have a list of each federally-recognized tribe. And then like every year or every two years we make a call to each one of those rancherias and ask: Is this person still your tribal chair. You know, is this your contact.

BIA usually does it. When I answered the phone this year when they called and said, is this your tribal

chair. And I asked them why do you want to know. And they said: Because we update our records. So there are records out there. There is not something that you have to start from scratch.

MR. CARDENAS: Yeah.

MODERATOR MILES: What about something like a webpage? That there is a universal webpage?

MS. MESSERSCHMITT: Some --

MR. CARDENAS: They do. I think the Bureau --

MS. BEIHN: Some don't even have computers.

MR. CARDENAS: -- the Bureau has the information.

It's just -- yeah, they update it. And there is when -- before, I guess their site got shut down, they had it on there. It listed every -- had every chairperson and address and phone number and contact information.

What I was meaning to say was that's up to the FERC to look into, and we could help you. But I mean somebody had mentioned earlier about trust responsible. And I think it was outside about -- with her about the EPA, about -- with Cortina or with the tribe, trying to dump your responsibility on another tribe. Well, that's the Agency's Trust responsibility to do that. And so -- I mean it's a difficult thing, but you have to take that responsibility.

You know you could ask me; I'll give you the

information. But it's not my job to just, okay, here's my information, without you asking. You have to come to me.

MODERATOR MILES: Tim, did you have something?

MR. WELCH: Yeah, real quick. We do have a list that we got from the BIA of over 600 tribes -- about 550, something like that. So what we heard from some other tribes is the same problem that you mentioned, Daniel. Sometimes it goes to the chief and it doesn't get filtered down or, if it does, it's like two days left before the meeting.

So I'm wondering if we just -- I mean, you know, you're right. It would be a lot of work, but I'm wondering if we need to send letters to the tribes and say: Help us identify, once again, who the key people that need to get these notices are. And that's something that we may need to work on.

MODERATOR MILES: This may not work for everybody, but I'm just -- what we're trying to be is creative, okay. This isn't any single solution. But in the email address, okay, send your email address for each of the tribes. That could go to anybody within that tribe.

Yes. Oh, I'm sorry. Gloria. Sorry.

MS. SMITH: I just have a question. Gloria Smith.

Do you absolutely need the person's name? I mean

this may be too simplistic, but what if you sent one letter to the cultural resource manager and another letter to the natural resource manager and maybe another letter to tribal council without anybody's name, and it just was sent out earlier, it should trickle around?

I mean we've got -- agencies have the same problem as tribes. It's a heck of a time getting the right letter to the right person in the right amount of time.

MR. CARDENAS: Yeah.

MS. BEIHN: That was kind of what my idea was, was to -- if a tribe has an EPA department or someone that's, you know, involved in these processes, then they should be sent a letter along with tribal council.

But when I brought up before about the Native American consultant or liaison, you know when you have a project going on, for instance PG&E, SCE, they have a project in a certain area, you have so many tribes that you know are in that area, and those are the ones you want to contact. If you get a liaison for that area right there, you're going to have all the groups, organizations, nonprofits, all the elders, all the people that you want contacted or that that liaison feels is necessary to be contacted, they're going to know about these issues.

If you send it to the tribal office, they may never hear about it. So that's the beauty of having a



Native American consultant.

If you have one around Pit River or Mooretown or, you know, they know their people. They know who is interested in that area and that project. They're going to be at the table. So that's why I feel like it's working well with Southern California Edison, having that kind of input.

MODERATOR MILES: That's something they would do like at the very beginning, like we saw the different process laid out. At the very first day, the very first process --

MS. BEIHN: Absolutely.

MODERATOR MILES: -- a list of things to do.

MS. BEIHN: That's one of the very first things.

That's why I like the State's proposal.

MODERATOR MILES: Geoff, then Ann.

MR. RABONE: Geoffrey Rabone, SCE.

But you have to be careful sometimes, because we have unintentionally insulted people by sending letters to the tribal chair without a name, and they felt that was disrespectful. So you have to be careful.

MR. CARDENAS: But that happens. I felt that way before, when you send out boilerplate letters, you can get that. But these shouldn't be boilerplate because they're specific to a site and an area.

So, for instance, if Hat 1 for PG&E, they would send the Pit River Tribe a letter at the initiation. When they send the letter to PG&E regarding their license is due in five years or six years, or whatever, six and a half years, they'd send us a letter saying PG&E's license for the Hat 1 hydro facility is due in six and a half years, and here is the contact information -- or here is our contact information, and the word "NEPA process is initiating," blah-blah-blah.

But I don't think that FERC is dealing with 550 tribes. I think we're doing -- because not every tribe has hydro facilities on their area. So it shrinks it down a little bit.

I think, like I said, it is time consuming, but that probably needs to be happening. And it just takes a phone call to find out who the right person is, I think.

MODERATOR MILES: Just develop some sort of process. When you have a list of all of the tribes within certain regions of the country and making sure there are points of contact for each one, that's kept updated every so often.

Yes.

MS. MESSERSCHMITT: Is that me, yes?

MODERATOR MILES: I'm sorry.

MS. MESSERSCHMITT: Thanks, Rick. North Fork

Rancheria, I think one of the things that I truly like about this tribe is they like to focus on what does work so you don't have to reinvent things or get around things the hard way.

One of the things that one of our licensee applicants has done, and I understand that this was a FERC suggestion, so it's obviously something you guys have been able to do before at FERC, is when this applicant went to apply for their relicensing on their first project or on a project, FERC told them, you need -- you know, how are you going to notify all of your stakeholders, all of your tribes, all of your interested parties.

And I wished I had brought the map. The license applicant brought a map to the first meeting. It was huge, but it was almost priceless because what it had was it had each hydroelectric project that they have in our area. And it showed when the license was going to expire, where they were at in the process, all the way through their last hydro project that they need to relicense, is going to be up for renewal in 2007. They start that relicensing process in 2007.

And so for us, what that enabled us to do is we're already gearing up for that particular project because that particular project has a lot of culturally-significant areas that we need to protect or

address. And we know that this project's coming up because of that color-coded timeframe. And it has saved a lot of information, and it's just one map. I mean, yeah, it's huge. But, like I said, it's very easy to follow, very easy to read.

And because a lot of these rancherias are nongaming tribes, they don't have a lot of money at their disposal or a lot of resources. So they can look at these projects and say, okay, project 1 is in this stage of the relicensing process. Project 2 is here. Project 3 is here. And then we know which project to concentrate on at any given time. And so it saves a lot of time and trouble.

MODERATOR MILES: What about a webpage? If each applicant had a webpage where they kept it up to date as to where the process was, would that be something that's helpful?

MS. MESSERSCHMITT: I'm sure a website would be good -- and please jump in here -- but a lot of tribes don't have computers. So a website, it's kind of like trying to give a TV to blind man. It just doesn't work very well.

MR. RABONE: Another problem. Geoff Rabone, SCE.

There has been lately -- I mean it's a pain for all of us, but there's a problem with licensees putting maps on the web these days, just for critical energy

infrastructure information. So that gets in the way of website communications sometimes. Unfortunately, we just have to deal with it right now.

MR. CARDENAS: Or just what the PUC had done with their -- I don't know what the whole technical -- how it's done, but when the subject of divestiture of lands came for PG&E, in particular to the PUC and here in California, they came out with a CD ROM. So even if it's sensitive information that shouldn't go out to the wider public, they can produce a CD ROM that can go to each specific tribe even if -- okay, then there's no computer. But it's better than a big old book like this. And that CD ROM had all the maps, when the licenses were to expire, all the information that was on paper. And so it was really easy. It was a lot cheaper than sending us a big old binder.

And then we were able to duplicate it and give it to the people that were interested on the council and our community, that information. And so I think there's a lot of innovative ways to do it, but I think when I look at notification, to me that means how is either the FERC or this utility going to notify the tribe of the process. And so I think there's a lot of good ideas already thrown out, it's just -- and in terms of the regulations, just like what the State had mentioned, is to make sure that the utilities do that.

And so maybe -- because I've heard a lot of things, that Edison is doing good, maybe Edison should go over to PG&E and say, this is what we're doing good, because it's like totally night and day is our experience. So I'm pretty sure they know each other, so --

(Laughter.)

MR. CARDENAS: -- it's as simple as that.

Because if they have a good relationship with North Fork, then there's no reason why the other utility shouldn't have a good relationship with ours. And it starts with notification.

MODERATOR MILES: All right. We've got to keep this thing moving. How about a couple more comments, because we have a limited amount of time, because some of us have to fly to Tacoma tonight. So we have to keep this thing moving. Why don't I take a few more comments, three more comments, and then we move.

Okay. Ann, okay, first. Ann.

MS. MILES: I had a question. One for Daniel.

I'm curious about what needs to be in a letter. If FERC were to send a letter to the tribe at the beginning of the process, what would you think the purpose of it is? What should be in there?

And then I had one for Lu also. I'm interested in the Native American consultant, how you go about

establishing that? How would either the company or FERC go about doing something like that, getting it going?

MR. CARDENAS: Just really quick. I think in the letter from FERC to the tribe it would say,, you know: Dear Tribe, PG&E has seven years left on its license and -- for the certain project -- and it's starting for the renewal of license. Please -- you know, it's a heads-up.

And then if there's any other information to be in there, it could just be a heads-up saying please keep in mind, please watch out for information, or you should be hearing from PG&E soon about all this stuff, the first stage, consultation, or whatever. But sort of something like that. Just a one-pager that says heads up.

MODERATOR MILES: Okay.

MS. BEIHN: Okay. With the liaison position you'd have to be really careful because -- what we've done in the past is when you have a working group working on a project, you get all the tribes together in the area and they discuss it. And then within those people, they decide who they want to represent them. You just can't pick somebody up and say, well, we want you to go to talk for us because not everybody's in agreement with that, and it just will not work. You won't make any progress.

So it has -- you have to go to the people themselves that go to these meetings. And actually, like

in our area, we have five -- five tribes, federally-recognized tribes, two state, and then we have some nonprofit organizations that are involved in two of these projects. And everybody knows each other in the tribal communities. So therefore if you have a liaison for that project, that liaison is going to let you know who the tribal chair is in this organization.

Okay. They had elections last month. This is a new tribal chair. That liaison is going to keep not only the tribe updated, but it's going to keep FERC and the licensee, SHPO, everybody is going to be onboard on who's in what position. It's just -- it's like --

MODERATOR MILES: Almost neutral within the tribe.

MS. BEIHN: Yeah. It's a win-win deal for both situations there. So that's what the beauty is of having a liaison, it's so -- I think it's really, really important to have. Really, because you are --

MODERATOR MILES: Liaison, ombudsman person, right?

MS. MESSERSCHMITT: Um-hum, yes.

MR. WELCH: Are they common? I mean throughout the country, I mean --

(Laughter.)

MS. BEIHN: I have no idea. I can only speak for



our area. We're working with a PG&E project, who does not have the liaison position. We would really like to see them do that because it would be such a big help to everybody. And then working with SCE's project, which is working well because they're kind of taking suggestions pretty well. Because they're working. I mean that's what you have to do, work together to what you want accomplished, to move on. You know, otherwise you're going to have stumbling blocks.

Tribes are going to say: You did not notify me. They're going to write the letter to FERC. They're going to write the letter to the Forest Service. Something's going to get stopped right in the middle of the process, and that's what you don't want to happen.

MS. BEIHN: I'll be brief. Having some liaison regardless is better than none. The Forest Service, which I'm going to leave my personal things out of it, they do have tribal liaisons in each region. And they at least have somebody that is supposed to be making contact with the tribe.

And you know we have a wonderful situation, and that's why Lu said that, because it works. And it's cost-effective and everybody -- it's a win-win situation. It's doable in other places. It may not be doable in every place, but then you have the option of having a tribal

liaison of your own, that can -- whose specific job is to do that outreach.

MODERATOR MILES: Okay.

MR. DACH: This is Bob Dach with Fish and Wildlife.

I'm wondering a little bit more on trying to sort of establish more of a two-way street, if you will, in that taking into consideration for a minute, let's say FERC does send out this letter to the tribes right away. Rather than have it just be a heads-up letter, it would seem to me what would be more productive, it would be a letter requesting the name of the person who was going to be in charge, requesting key decision points, requesting when and how you wanted us to consult with your tribal chairs.

If we had that information upfront when we contacted the tribes, we could sort of refer to it, you know, as we were working through the process.

The other thing I was just sort of contemplating in my head is whether or not there was a proposal in the NRG proposal for the federal agencies to do MOUs between one another, to ensure that certain activities were actually conducted.

I'm curious as to whether such an application might be appropriate with a tribe on a project. That there was sort of an agreement entered into amongst the parties

that there could be some assurances on both sides that if, you know, there were these efforts made to ensure that the tribes were engaged that there would be some reciprocal benefit certainly to the participants that the tribes wouldn't be coming back in at a later date and requesting additional things or just to try to overcome that, to sort of put this process upfront.

MS. MESSERSCHMITT: Keep in mind, an MOU isn't a one-way street. It would not save you from the droids coming in later and saying, well, you forgot this and you didn't do that. What it is specifically intended for, as my understanding goes, is a partnership, is sharing of information, equipment, you know, whatever you put in that MOU.

And we do have MOUs with the Forest Service, with Park Service, with Interior, different agencies, and that kind of thing, and they do work for us. And there are other rancherias who also have those, and they do work. So it's a good resource, but I wouldn't put all my eggs in that basket.

MS. BEIHN: Well, we just finished and signed a programmatic agreement with PG&E relicensing through the FERC, and I think that was a positive thing to do, because you have stipulations in there, this is what we want to accomplish, this is what we agreed to do during this

process. And if you agree to it, then you would be a party to the PA.

MODERATOR MILES: All on --

MS. BEIHN: Yeah.

MR. DACH: I think -- the issue I think, certainly from the agencies that I've worked for is there is often a feeling that we have done what the tribes wanted us to do, to find out later of course that we had not. And it was always an issue for us to be able to know exactly what we had to do upfront so we could make sure that we met everybody's needs. So that might be something we need to figure out how to include in the process.

MODERATOR MILES: Okay. How about one more comment and then we've got to move on to the next topic.

MS. TUPPER: Julie Tupper with the Forest Service.

Just getting back to tribal liaisons, at least in California every forest should have, and I believe they do, a tribal liaison. And some forests have better tribal liaisons than others. In many cases the person is a member of a local tribe that happens to work for the Forest Service, so they're sort of the automatic person.

But part of their responsibility is they're supposed to know who all the tribes, whether they're federally recognized or not, the domain, the land that's --

you're not really a tribe, but you're a chunk of land, like you were discussing earlier. That's another source you can contact. And we have tried to help, as we go through licensings, to make sure that the appropriate people are involved.

But I think from what I'm hearing here, we just need to do a better job among all the agencies of making sure we've coordinated and are making sure the appropriate people are involved.

MODERATOR MILES: Okay. Let's move on to the next topic. The next topic is Separate Scoping Meetings. Who would like to begin?

MR. CARDENAS: Yeah, just like I mentioned previous, I think there is a need. I think with the discussion that we had before lunch, I think other people had that same need, that as long as it's separate from the rest of the public, I wouldn't have any problem with meeting with other agencies, and probably have to, like she had mentioned has to do with the other agencies, because they're involved with us anyways, like the Forest Service, the BLM, Fish and Wildlife, and the such, is to have a -- logistically it can be done. But there is a need for it because it makes us feel as though we're, again, we're part of the process and that we have ownership in the process. Whether that's true or not, that's another story, but it

will probably alleviate some people -- some tribes.

It's a trust thing. You know, we're a little bit more trusting if we're given that time specifically to us.

MODERATOR MILES: So if I were chairing today a scoping meeting and we had the federal agencies and the state agencies here, along with the tribal nation, this would meet your needs?

MR. CARDENAS: Yeah. Yeah.

MODERATOR MILES: Okay. Any other comments?

MS. MESSERSCHMITT: Well, I think that it needs to be made clear that these are -- there are confidentiality issues involved, and that is specifically a good reason to have these scoping meetings.

MODERATOR MILES: Sure. And that's possible. Just as an aside, when I had a case involving a Confederated Tribe, we looked at their religion. And that tribe has a very strict tenet that says only tribal members can learn things about their religion. But in order to understand and evaluate their issues, we had to enter into a confidentiality phase so that the people within the process would agree to it. And it worked out.

Okay. That was fast.

Okay. Number 3, Enforcement of Agreements. How to pay for them. Dan, you brought this up.

MR. CARDENAS: That was back to the Solicitor's

question. That's what we're finding is that we agree to -- with Pacific Gas & Electric in terms of a management plan or a cultural management plan, we agree to those things because on paper it looks good, it looks like, okay, our sacred sites and our cultural sites and our grave sites are going to be maintained or taken care or protected, secured. But the reality is, from their point of view, is they're saying that they can't afford it, they don't have the budget for it, it's too expensive, it's costly.

And monitoring, again that's another one of those words where, like "consultation," that everybody has their own definition of. And from the Tribe's point of view, monitoring means to our tribe is that you're hiring tribal members to monitor our own sites, because we know where the sites are. We know where everything is at and what should be and what shouldn't be, like security guards. Versus the PG&E's perspective is the monitoring is you send the guy once a week or once a month to go look at the sites. And so it's a different perspective.

And then what we're finding is they're saying there's no resources, and so -- and we don't have the resources to do it. And sometimes they're even telling us: You do it. We'll allow you to monitor it. But it's their responsibility, and they're sort of giving us -- putting their responsibility on us, and we don't have the money to

pay for it. So is there a way to mandate, to change the regulations to make sure that they make -- they find the money to do those -- to enforce these cultural management plans or agreements.

MR. BLAIR: John Blair. Would this get at the issue, for example, on the recreation on utility sites. Sometimes the utility will enter into an agreement with the local recreation agency or, let's see, a fire department or a local sheriff's office, provide a stipend to provide either recreation management or fire protection. Would that same kind of arrangement work for the tribes in terms of enforcement or monitoring?

MR. CARDENAS: Yeah. Because I think the tribe, my Tribe specifically would feel like in part the ownership of the project if we're part of the process. And it goes back to money, but -- I think it's beyond money. But if they provide resources to be able to hire or tribal members to be able to enforce the -- you know, I think they're not shrugging their responsibility, but it's sort of bringing in -- it's a co-managing of this plan. I think that's -- that would be a step in the right direction.

MR. WELCH: Yeah. Tim Welch, FERC.

Dan, to answer your one question, I don't think the Commission could order a license or order a licensee to spend certain dollars to protect a site. However, what



FERC can do is they can enforce the terms of the license.

So my suggestion would be that when you're in a relicensing, to be as specific as possible in any kind of cultural resources management plan about how the enforcement would take place, who would do it, what the hours would be. I mean just get as specific as possible. And once that licensing is done, then it's the licensee's obligation to comply with its license. And they must spend the money to comply with the license.

Do you see my --

MR. CARDENAS: Yeah, I understand that. But when we work through the negotiations, they already say upfront: We don't have the money to do it. And so that sort of -- from our Tribe, maybe we're not good at negotiation, but it discourages us when PG&E, this huge corporation, says, we don't have the money to do that, but we see them doing a lot of other stuff for the community around us and not for the Tribe.

MODERATOR MILES: Okay. Ms. Messerschmitt.

MS. MESSERSCHMITT: I can't speak specifically to the problems that you've had with one license applicant, but I can talk about what we have done to solve some of the issues of protecting cultural resource sites or cultural artifacts, historic artifacts, things like that.

We talked with a licensed applicant and said, you

know, you have damaged cultural resources or you have the potential to damage cultural resources in this area. You know, we want you to protect them. And we have had an applicant come back and say, well, that's too costly for us; we can't do anything about it.

So what we did was not look to FERC. We looked to FERC's partners: Agriculture, Interior; and said: What can -- how can you help us. And the basic bottom line is these applicants not only do business with FERC, they do business with Agriculture, Forest Service, Park Service, BIA. And therefore it's easier to get -- like let me tell you what Agriculture did for us.

The Forest Service came in and said to the applicant: Look, you know, you're right, you don't have to do this as per the FERC license. We think it's the right thing for you to do in order to keep a good working relationship with us.

And so they didn't -- there was no -- it wasn't a threat, but it was another way of getting the applicant to do something that, for instance, FERC wasn't saying, we're not responsible for this, we can't enforce it. So we looked to other partners to say, how can you help us. And it worked out and that's another way to do that, is to look for other avenues when they say we can't help you.

It'd be nice to build that in, but if it's not

doable there are other ways to do it is what I'm trying to say.

MODERATOR MILES: Any other comments on Number 3?

MR. CARDENAS: Well, the reason why I asked that and why it came up is because I looked in the National -- NRG's proposal made mention that they recognize that the tribes may exercise independent regulatory authority in areas such as water quality and cultural resources. So they recognize that there's some sort of regulatory authority that the tribes have in terms of cultural resources, then it seems like then that means the tribe, in my mind, has the ability to mandate certain things. And that's from their own document, on page C-29. So.

MODERATOR MILES: Okay. Any other comments before we move onto Number 4?

Okay. All right. Number 4: How to protect resources while undergoing licensing.

MS. RISDON: Hi. Angela Risdon from PG&E. I would like to put on the board what Dan said, because I agree, to go ahead and have that list of terms, to develop a list of terms so that there's some common understanding. So I'd like us to capture that.

MODERATOR MILES: Okay. So, in other words, have a glossary of terms?

MS. RISDON: Um-hum.

MODERATOR MILES: A glossary of terms. For example, somebody mentioned today "consultation," what does it mean. Right? Yeah, because some of you may be getting letters saying, holy cow, what does that acronym stand for.

Okay.

MR. GARCIA: I guess a comment also on that is that if there are violations in relationship to the orders that FERC issues relative to the project's proponent, the license, in most cases the agency that principally administers the compliance issue would be the State. And when the State initiates the action with the proponent, what other ways are the tribes involved or knowledgeable of the action relative to the violation? I don't think so.

So it's not transparent, it's cloaked. And so tribes don't -- aren't cognizant if sufficient instream flow requirements are met for the fish, if there are violations of cultural resource issues that are being impaired by -- say the structure blows out and discharge of the water or some part of the facility starts going downstream. So...

MODERATOR MILES: It may be as simple as just: Who do I call, right? Like, for example, we have a FERC com line at the Commission. If you think somebody's doing wrong, call up the FERC com.

MS. MESSERSCHMITT: What's the number?

MR. DACH: Yeah, what is the number for that?

MODERATOR MILES: Huh? No, we set it up. It's toll free. Okay. If you think somebody is violating their license, it's an enforcement hotline, it's toll free. You can call them up, and the communication that you have with the person at the end, who is normally an attorney within the Enforcement Division, they will take the information and engage you in a conversation; and then talk to people who might know something about the license. Maybe talk to the licensee.

And what happens about 90 percent of the time is that if somebody's doing something wrong, they stop. Or, on the other hand, if they find out that what they're doing is consistent with the license. You know that and with that knowledge you then could take another step like filing a complaint or take it down some other step.

We've also set up a toll-free line at the Commission in order to engage parties in mediation. It's again toll free. 1-877-337-2237. So we gave you two options on that.

MR. GARCIA: So what ways or means is FERC initiating consultation with the tribe in relationship to those transactions? Has disclosure in relationship to that administrative process been made available to the tribe for remedy?

MODERATOR MILES: Um-hum.

MR. GARCIA: I mean are they cognizant of that?

MODERATOR MILES: You mean are all the tribes aware of this?

MR. GARCIA: No, I mean people that are --

MODERATOR MILES: I don't know. I can't answer that.

MR. GARCIA: -- within these project areas.

MS. MESSERSCHMITT: No. I mean even though we're very active, we didn't know about that.

MODERATOR MILES: Yeah. I guess, I've got to tell you, one of the things in my unit is reaching out to five large industries and all of the communities within those industries, and how can we tell them that ADR exists, you can call us up.

We put it on the webpage, we send out a newsletter. And so maybe what we need to do is do a better job. I mean we all know at my unit that we can do a better job of reaching out to people, okay, but then again what little are we talking about, 10, -, 20,000 people at a minimum. And so how do you hit all those addresses. But that's a good suggestion.

Maybe what we should do is send out communications to the tribal nations and let them know of these resources, or something. Think of a way to do this.

Yes.

MS. MILES: I wanted to say one thing on that.

In a lot of the cases you've got the conditions of the license and it'll be labeled an article it'll be a certain "hello" or certain whatever. And most often within that condition, it explains who to consult with. And it'll have a list of the federal agencies, the state agencies or the tribes, whoever -- and typically the people that are listed in that article are the ones who have an interest in that particular issue as it's gone through the relicensing.

MS. BEIHN: At FERC?

MS. MILES: At FERC.

MS. BEIHN: Okay.

MS. MILES: At FERC.

MR. GARCIA: Otherwise known as an intervenor?

MS. MILES: No. You don't have to be an intervenor, you just have to have showed that you're interested in that. So say minimum flows are something that the tribes care about during a relicense. You can ask to be a consulted party as a part of the article that's placed into that license. And then when something would come up on that, those would typically be the people -- I don't think we'd typically reach out beyond that. It's not that we couldn't change it, but I don't think we typically do right now.

MR. WELCH: Tim Welch with FERC. Usually in a compliance review, the group or individuals or entities that bring forth the allegation, and typically the resource agencies are the ones that are contacted when FERC sends out an allegation letter, I don't think typically FERC has included the tribes unless the tribe was the entity that was bringing forth the allegation.

MS. O'HARA: This is Kerry O'Hara --

MR. WELCH: But it's --

MS. O'HARA: Oh, sorry.

MR. WELCH: Sorry, Kerry.

But I mean it is a transparent process in that it's conducted, you know all the letters and correspondence are all on the public record of the entire investigation.

MS. O'HARA: Kerry O'Hara, Department of Interior. I guess one suggestion FERC might consider when those instances arise is sending a copy of this compliance letter, or whatever, to the service list and the mailing list for that project. Because a lot of times FERC stops doing that after the license is issued, but I think that would capture a lot of people, because the tribes are usually on the service or the mailing list.

MODERATOR MILES: Keep a current service list.

MR. CARDENAS: And back to the comment regarding whether or not the tribe gets this information, I think in



my Tribe's case we consider our ancestral territory our reservation, and we still -- that's one thing. The most important thing that we consider is even though, you know, technically it's not the reservation, but you know it says in our Constitution, it says it in all our documents, that all our resolutions that we pass, that our hundred-mile square is our reservation. And so if that being the case, the tribe should be notified of any of these things that are going on that are alleged to go on, these violations of the license, we should be notified.

Whether we know all the technical, all the details, I don't know about that. But we should at least know when these things happen.

MODERATOR MILES: Yeah. Just one final comment from me on this is that if you take a look at the evolution of how disputes have been addressed at the Commission over the last 30 years, you see that in the last three to five years the Commission has made a very strong effort to try to address disputes at the earliest possible stage.

We encourage parties before you file a formal complaint to contact us and we'll try to work it out in an informal basis and see if we can't get an agreement. Because the longer you let a dispute lay around, the longer it takes to resolve, and it just gets more difficult. And of course you delay any mediation to that potential

dispute.

So we really encourage that and so I -- just a little comment from me, since I really believe in this stuff, but -- okay.

Any other comments on how to protect resources while undergoing licensing? Yes.

MS. BEIHN: Just a quick one is the confidentiality agreements --

MODERATOR MILES: Okay.

MS. BEIHN: -- and not passing out information unless it's on an as to need -- need-to-know basis. It's just --

MODERATOR MILES: Yeah. We could -- I mean, for example, we could post on the webpage a standard confidentiality model agreement. And we have those, so we don't have to recreate or reinvent the wheel. You might want to tweak it for your own personal needs, okay. But there are standard models that are very -- that have been used in a number of different industries. And that's an easy thing to achieve.

Anything else?

Okay. How to involve tribes in settlement agreements.

MR. CARDENAS: My own question on that was settlement can mean -- again, all kinds of different

things, and not necessarily monetary, but is that what -- would that be when two -- the both parties have a disagreement and then it gets resolved whether it's through mediation, arbitration or negotiations, or whatever, and then whatever the resolution is, that's the settlement? Or is it actual damages and...

MODERATOR MILES: Normally settlement agreements are agreements entered into voluntarily by the parties. If you have an arbitration or a judge's decision, that's not usually part of a settlement agreement unless the parties agree that we will settle on whatever the judge or the arbitrator says. Okay. But that's usually the exception.

But, no, I think what we're trying to look at here is that to the extent we can get parties to agree on the terms of a license, the conditions of a license before it's filed, that's in everybody's best interest. So how can we encourage those type of agreements before a license is filed.

Ann, did you want to say something?

MS. MILES: No, that's what I wanted to say.

MODERATOR MILES: Yeah. But I mean what we have experienced is that you know we have in the Alternative Licensing Process, geez, if I got the exact numbers, it may take a little bit longer than the traditional process before an application is filed, but normally you wind up

with more settlement agreements in the Alternative Licensing Process.

And what happens if you get a settlement -- or if you get a license filed following the Alternative Licensing Process, it takes the Commission, let's say, two years to complete the new license. If you follow the traditional pattern, it takes four years. So obviously getting all of the parties involved early on and trying to get them to work out their disagreements before an application is filed is to the benefit of everybody.

Yes.

MS. MESSERSCHMITT: I think that's a ringing endorsement for the State's proposal because I think the idea of bringing everybody to the table at the onset will result in less dispute as you go through the process, because you get to know who everybody is and where they're coming from and you end up streamlining the process.

Like I said, I don't -- I think they learned this through experience, just dealing with the ALP process and the other things that were going on, so I think that's something to seriously consider.

MODERATOR MILES: Would education and training and collaborative process and negotiation at the outset benefit? Would that be a good thing?

MS. MESSERSCHMITT: Yes. Sorry.

MR. BLAIR: My mother wanted me to take shorthand when I was a kid, but I didn't learn how. I'm way behind you. Give me the two points.

(Laughter.)

MR. BLAIR: Help me out. What were the two points? Educate was one.

MODERATOR MILES: Oh, education and training. And also: Earlier involvement will equate to increased chances of settlement.

MS. MESSERSCHMITT: It will decrease the need for controversy or for dispute because everybody's got ownership.

MODERATOR MILES: You address conflict earlier rather than avoid it or putting it off.

Yes.

MR. DACH: Yeah, a clarification question for you. In all three proposals that we have here in front of us, at least, the California Proposal, the IHC Proposal, and the NRG proposal all specifically have set up that all stakeholders would be involved from the start.

So other than the terminology where -- I know, for instance, in the IHC Proposal that there is a definition for stakeholders and it includes resource agencies and tribes. And we just use "stakeholders" because we couldn't fit everybody in all of our little

boxes.

But I'm curious as to the distinction you're drawing with the California Proposal, because I can't see it and I want to know what it is to see how we can work with that.

MR. CARDENAS: When I look at this, when I look at the California Proposal, like the second box, it says, "Agencies/Tribes/Stakeholders," and to me that equates to importance or how they fit into things. In my mind as long as the tribes are more important than the average stakeholder, which could be environmentalists, bird watchers, whatever, then I'm happy. That's how I look at it.

MR. DACH: How is it -- I don't want it to be a semantics thing. I don't want to -- I mean because we see "stakeholders," and they specifically say "tribes," to me it seems to me that's a nonissue. It seems to me the way the parties are actually addressed and dealt with in the process would sort of make the distinction that you're looking for.

So I'm wondering if that's right or if it's just as simple as just saying tribes separately --

MR. CARDENAS: Yeah. The way I look at it is because we're sovereign entities, we're sovereign governments, then we should be separate, and the

stakeholders -- and our or our input should be have a higher value than somebody else's comments because we're -- it's from our point of view, because when we're lumped in with the rest of the stakeholders, then our comments are just -- are taken in with the bicyclists and the hikers, then it makes us feel like -- it makes me feel as though we're not as important or our issues are not important.

And so I don't know if it's semantics or if it's just -- but it's important --

MR. DACH: Well, the issue --

MR. CARDENAS: It's important to us.

MR. DACH: Yeah. The issue that you're describing is not a semantics issue. The way that it's presented in each of the three proposals I think is a semantics issue because I think -- again, speaking for the IHC because you know that's the one I participated in, we certainly set the tribes up to the same level that we are.

As I said earlier, we didn't put you on a different level or on a higher level, but we included all the same provisions for the tribes that we did for the resource agencies.

That's what I'm trying -- I'm trying to understand if that's not enough or if that was inappropriate or if there's something about the California Proposal that specifically sticks out that says this is how

we want it done.

MR. CARDENAS: Yeah. I think it does. If you look at -- later on in the process, it talks about -- like, for instance, their second-to-last box it talks about license request 401 CZM from States and Tribes. I mean it specifically targets the State and Tribes almost like equal in terms of either licensing or in terms of commenting.

And one more time they talk about it here too where -- on the last box on the first page, the "Agencies/Tribes provide 'preliminary' Mandatory and Recommend [the] Conditions to FERC." It makes it sound as though the tribes have control or some sort of -- like I said, not just more of the ownership, but some sort of -- you have to abide by what the tribes are requesting. I think that's important to us.

MODERATOR MILES: Brett.

MR. JOSEPH: Yeah. Just to -- I mean I think I certainly understand in the text the term, and I'm looking at the IHC Proposal 3.2, there's a parenthetical in there that defines what is meant by the term "stakeholders."

Now I'm not saying that that is necessarily enough. And what I'm hearing is that we need to also carry that forward in the boxes. But in that definition it does specifically identify state and federal resource agency and tribes in the same way, I believe, that is laid out in the



California proposal, but we didn't carry that forward into the boxes and we should have.

But I think there has been an effort throughout.

Certainly the intent was that the tribes be recognized as pro-equal, separate entities for these purposes, of consultation throughout.

MODERATOR MILES: Ms. Messerschmitt, then Gloria.

MS. MESSERSCHMITT: I'm willing to talk, but I'd like Jim to talk Federal Rules because he may cover what I'm thinking.

MR. CANADAY: Well, I don't think that the IHC meant any disrespect to the tribes and their intent was to leave them out. But what we're trying to do is acknowledge that the tribes have, in some cases, probably greater authority than some of the agencies have, have a greater stake in the outcome of the licensing than the agencies may have, and certainly a greater stake in the outcome and interest than "Friends of" whatever may have. And so that's -- it's an acknowledgement of that in both the interest and the authority in the part that you should play in the process.

And I don't think they mean any different than that. We just may have expressed it better.

MS. MESSERSCHMITT: Well, see --

MR. DACH: Well, we --

MS. MESSERSCHMITT: Go ahead.

MODERATOR MILES: Only one person talks at time.

MS. BEIHN: Aside from all of that, I'm looking at the timelines here. And it seems to be more reasonable.

And now I wouldn't have said that last year because I thought five years is ridiculous to have to go to all these meetings and do all these processes for a relicensing. I thought who has time for that.

But now into it for two years, yeah, we need the time because we've already run into a problem. I think I said earlier, we have already run into a problem. It may set it back for six months. That's a long time, you know. That's a long time if you're looking at these timelines in a five-year period and you say, uh-oh, we have -- and we're not through with our studies yet. What are we going to do. We only have two years. We're a year and a half into it. What do we do. It's winter time. We can't go there. We can't do those studies because there's snow.

MODERATOR MILES: That's right.

MS. BEIHN: I mean there's a lot of things that come, enter into that you may not have counted on in your timeline. And this seems to be more reasonable. That's all I -- you know.

MODERATOR MILES: Okay. Ms. Messerschmitt, and then -- did you have anything or is that covered?

MS. MESSERSCHMITT: I think both Lu and Jim hit it. I agree with Jim, I don't think that you guys meant any disrespect, and I didn't mean to portray that. However, I think that the State was a little more respectful, a little more cognizant of the role that the tribes do play.

And Lu's right about the timeframes. That was my particular problem with the IHC, and I asked you about that this morning, about the timeframes. Because she's right. And, like I said, that's the beauty of...

MODERATOR MILES: Did you have something or...

MS. SMITH: (Shakes head.)

MODERATOR MILES: Okay. Bob. Bob first.

MR. DACH: I want to clarify. In the document that we have, we actually define stakeholders as -- I mean we did as state and federal resource agencies and Indian tribes, but we included nongovernmental organizations, local communities, and the public. And I'm wondering if that broad definition of stakeholders is not appropriate.

For instance, would we say "State and federal resource agencies, Indian tribes, and other stakeholders"?

MS. MESSERSCHMITT: And other stakeholders, yes.

MR. DACH: Or "and stakeholder something."

MS. BEIHN: "...and stakeholder," not other.

MS. SMITH: Well, what actually happened when we

were doing this, you know this is just a proposal, that obviously the rule never looked this way. We had this thing up on a wall and we had tribes and we have tribes singled out is certain specific things. We have states singled out.

And, finally, I mean we didn't have a wall big enough to cover this thing. And yet, as you can see, it's very complicated. And it wasn't -- I mean we talked about it in the room. It was a choice to go ahead and just say -- and we struggled over it. Can we just say "stakeholders." And maybe in retrospect -- I'm not trying to sound offensive here -- we should have thought about it and before we published it, gone back and said what we meant. That's what happened.

MS. BEIHN: Yeah. I agree you should have went back, because I have --

(Laughter.)

MS. BEIHN: I have been to a lot of these kind of meetings, and let me tell you, the number -- one of the biggest complaints is what Daniel is speaking of now, that the tribes are not in the proper position in order, and they need to be. It's really a big issue with the tribes.

MODERATOR MILES: It helps gain respect and trust.

MS. BEIHN: Exactly.

MODERATOR MILES: Particularly in a collaborative process.

MS. BEIHN: We don't -- establishing when you're sitting with rafters or somebody or campers that come and say, you know, this is our land too and we can do what we want and blah-blah-blah, and you're sitting there going, geez, you're on our resources and you have that attitude. I mean we don't want to be in that same group.

MODERATOR MILES: Okay.

MS. BEIHN: We just don't want to be.

MODERATOR MILES: We have one hour left and in that hour -- in that hour we have to address the rest of the topics and we want to leave five or ten minutes for a wrap-up, next steps. Just want to give you that heads-up, okay?

Let's keep going. I think we can do it.

Okay. So -- but I may be pressing a little bit, okay? So I'll do it very constructively and not try to be -- I'll try to be sensitive. So stop it, Rick. Go.

Okay. Number 6: Cumulative effects outside of project, how far out.

Okay. Who would like to begin?

MR. CARDENAS: The reason I mention that is how with FERC would they entertain the possibility of enlarging the project, the scope of the project areas for these

projects? I mean a half mile, sometimes a quarter mile doesn't -- to me doesn't -- it's not a big enough space.

Would it hurt if you increase the project area?

I mean the utilities might balk, but would it hurt FERC?

MR. WELCH: Yeah. Tim Welch from FERC. The project boundary itself that you would see on a map, or maybe what you're referring to as the project area, that is a line that FERC when it licenses a project draws around all lands and facilities needed for the operation of a project. That does not in any way limit the impacts of that project.

We recognize that impacts to the project don't pay attention to a line drawn on a map. So when FERC evaluates the impacts of a project, whether environmental or cultural, you know we're not restricted by those lines on the map.

MR. CARDENAS: I think the reason why I mention it, maybe it's just our relationship, just our single tribe's relationship with our licensee, but it seems like when we make these discussions with them, it's like: No, their lines are right there, so we're not going to discuss anything outside it. And that's just tough luck, but we'll discuss everything that we have to do within that line. And so maybe it's just our relationship. Maybe they need to be educated by FERC. Maybe they need to be educated by

FERC more about what their responsibility is, I don't know.

MS. MILES: Normally as a part of the relicensing that when you're talking about cultural resources, there will be a discussion about what the area of potential effects is and some agreement among those that are involved in those issues about what that should be, so then you know what areas need to be studied. So I would just recommend that you talk about that in the very beginning of the project and see if you can come to some terms over it.

And if that's an area where they're struggling or dispute in some way, then I think that's the point to use some alternative dispute resolution or come to FERC for some dispute resolution, or whatever means may be appropriate.

MR. CARDENAS: I think for our project, and it may, I don't know if it's too late or not, but we're already into the years into the relicensing of the Pit projects, but I think that's where the education has been mentioned a couple of times. We don't know. Either our attorney's not telling us or we just don't know that we have this option to say: No, we don't like half a mile. We want a mile.

Or if we don't know that, then we're never going to say, we're never going to dispute it, and just we're going to go along.

MODERATOR MILES: Sure.

MR. CARDENAS: And I think that's part of it is that there's a lot of things we could be disputing with PG&E, but we don't know. And we just listen to what they say, and we think, well, they're the -- of course they're just going to say that, but we don't -- a lot of stuff, we need to be educated. Maybe it's a general education about it, because we just let them say whatever they want and we just go about it and never dispute anything.

MODERATOR MILES: Over here.

MS. PATTISON: I want to get back to box zero. It's my favorite box because I think all this education of everybody who needs it rests in box zero. When FERC sends out that letter, I've always envisioned, as I saw that box, and correct me if I'm wrong, that it would include a notice to the applicant of what is involved in this. And that would include cultural resources upfront, with whom to discuss this, what constitutes consultation, and all the other issues we talked about, what would be in an environmental document that would meet muster. So I think the education mode is in FERC's hands to do right from the onset.

MODERATOR MILES: Sure. Thank you.

MS. MESSERSCHMITT: I actually brought that up and if I'm not articulating that right, please let me know.



With regard to that, what Ann said sounds good, but say you have an applicant that starts their project or their relicensing and then they decide to build a road and it's not in the project area. And they dig up, plough over a body. They don't just say, oops, and put it back.

How do you, how do we address that because it's not in there? And that's what I'm saying. You know some of the issues that Native Americans bring to the table, they're not an "Oops, we did a bad thing," they're serious issues that need to be addressed before they happen, not after. Because you can't fix them after. And this is one of those issues that I think needs to be addressed in a serious way with FERC, is, you know, how can we protect those -- those areas that are impacted by the project but aren't not necessarily a part of the project.

MODERATOR MILES: Okay.

MR. JOSEPH: Brett Joseph. Just a clarification question. The example you give, is that not something that you would envision as being addressed in the scoping and in the NEPA process? Because it sounds to me like that part of your impacts analysis that is not, as the point was made, is not limited by the geographic boundary of the project. It's determined by the scope of the impacts.

MS. MESSERSCHMITT: I don't think it is being addressed by NEPA, but let me discuss it with Lu a little

bit, see if it actually is, okay?

MODERATOR MILES: Anything else on this one? If not, we'll move onto 7.

Okay. How to best involve tribes in the process, including, I think when we discussed that, getting some support.

MR. CARDENAS: And I think that when I brought that up I think I brought up the different agencies as well. I think that's really important. Some -- you know not the logical, but in somebody's mind it might seem like it is important to us, we're going to be there no matter what. At some level that's true. But on another level, again we -- like for today, we're taking a day off from work or whatever we're doing to be here, and that makes an economic impact on us as Indians.

Whereas some of the rest of you -- this is might be your job, and so you're here, you're getting paid no matter what. And so a way to build that in there, you know if there are companies that are SCE that maybe out of the goodness of their heart do these things, but some companies don't have hearts. So it's going to be -- to mandate them to maybe find the resources to get us to the table, whatever the meeting in Sacramento is, in San Francisco, in our area, Redding, anywhere, because we're looking at a wide area.

And most meetings we can meet, but there's just some that we cannot, and it deals with resources. So I don't know how you can mandate them to do that. And that goes back to liaisons, or whatever, people that you hire, or just travel reimbursements or something, or --

MODERATOR MILES: This is something that needs to be addressed. You're suggesting knowing the development of a process, but even at the start of the process you want to sit there and address this question.

I remember one case in New York where there was a representative for local environmental groups and the way that they kept him involved was they went out and bought a computer for the person. And that way that person got -- you know, it cost 600 or a thousand dollars.

Yes.

MS. TUPPER: Julie Tupper, Forest Service. I think Geoff Rabone left. But on the Alternative Licensing Process that SCE's doing at Big Creek, the decision was made that all nonagency people would be reimbursed for their travel expenses to attend those meetings. And the decision was made that meetings would be held basically in a location that was central to where the majority of nonagency people lived, basically most of the meetings were held in Fresno or Clovis because that was the minimal travel time for the people who lived in North Fork and

people who lived in southern parts of the area.

And that was a decision that was made, and SCE basically reimburses all of those folks. So it can be done. But, you're right, it was out of the goodness of SCE's heart, because they want the process to work. And there's no regulation that says they had to do that, and I think that's where you're getting to, is it would help if there was -- because I've been at -- I've worked the whole State of California for the Forest Service, and it sort of depends on where you what happens.

MODERATOR MILES: Okay. Again, I think that's a good thing, and let's try to keep away from particular companies and stuff like that, because -- all right.

Anything else on Number 7? I think we talked about -- yes. Jim.

MR. CANADAY: Does not the Commission collect annual fees from projects?

MODERATOR MILES: Yes, of course.

MR. CANADAY: Could not part of the annual fee be dedicated to support the Native Americans that are affected by the project?

MODERATOR MILES: We're going to put that up on the -- that's --

(Laughter.)

MS. MILES: Rich. Rich.

Rick. It's getting late in the day. This has been a sore subject with a lot of people because right now it is -- the annual fees are collected. And even in the regulations, it's -- they're collected for reimbursement to state and federal agencies that participate in our process, but what happens with them is it goes back into the federal budget generically. And I know a lot of the state and federal agencies have been trying to get it directly delegated to them, but our understanding is that it would take Congress to have a bill that allows that to happen.

So certainly we can put this up, and I can't --

MODERATOR MILES: We could put it up there.

MS. MILES: Sure. I think it's a good idea to put it up, but I just want to folks to know that it's -- it's been talked about a lot. And I think a lot of us wish this is exactly what happened, it's a good solution to the problem. And maybe folks want to go to Congress over something like that.

MR. CARDENAS: Yeah. But on that, as somebody had mentioned, increasing FERC's funding. And I think FERC can't lobby within itself, right? So that's where it goes, it will help the tribes and it will help the FERC find the funding. Because I know the tribes can lobby and have lobbied Congress for funding, increased funding for certain things.

I think this is where it would help benefit both agency -- both the agency and the tribes where that could be an issue that we move forward, especially in California, if the California tribes got together and lobbied our 50-some-odd Congresspeople to increase FERC's funding as well as stipulate that we be reimbursed for our expenses as the agencies and the states are asking. I don't see any problem with that, but I think that should be -- or mandate that the companies pay for it out of their own pockets. They're getting reimbursed by the ratepayers anyways.

MODERATOR MILES: Jim, do you have something?

MR. McKINNEY: Yeah. Two points on this. Jim McKinney, Resources Agency. One is that our California Public Utilities Commission has a model for this type of reimbursement to intervenors. So if you file as a formal intervenor in a proceeding before the PUC, you get your attorney's fees reimbursed and I believe travel and perhaps some labor time as well.

I know that the NGO environmental groups who are active on hydro issues use this all the time at the PUC. It's a model that works.

And you got at my second point which is to remember that in California at least we have two kinds of dollars: We have shareholder dollars and ratepayer dollars. And it's the ratepayer dollars that are

reimbursed through the PUC process that cover all environmental complaints costs. So all the costs involved with relicensing of facilities in California are reimbursed through the rate base, through the PUC.

MODERATOR MILES: Okay. Yes.

MR. GARCIA: I think it comes back to the premise at the very start. If you don't -- if the tribes do not know of the project they're located at, on a USGS map, with the license number, the operator, and other associated information, you need to send them a letter and say: You have FERC project number 77 and it's located in this county. The tribes may -- and you have 10 tribes there. And it's may be affecting a couple of them, but nevertheless eight of those tribes will not know anything about project number 77.

So if you -- when you initiate consultation or sending a letter to the tribe, and you send a USGS map or some map of define location with a legal description, that definitely gives adequate visual, narrative, and legal description to the project location. So, you know, we get these notices also.

I went through the papers, 154 of them. I mean I have no whereabouts of the majority of these projects.

MODERATOR MILES: So what you're suggesting is that we take in Notification, Number 3, and if you had a

one-page letter, the one-page letter ought to have some attachments that allows the reader some information about how to truly understand the scope of what you're talking about, is my land affected.

MR. GARCIA: Right.

MODERATOR MILES: And where is it going to be and -- yes.

MS. MESSERSCHMITT: I think it's even a little more simple than that, Dan, is if you ask me where project number 1371 is, I don't know. But if you asked me where the Vermilion Project is, I know where it's at. And I won't need a map, because I already know that area. So it doesn't necessarily have to be a complicated issue.

I think if you stop using company language and just use language that everybody can understand, meaning a physical name, I think you're okay.

MODERATOR MILES: Anything else?

Okay. Let's move on. Number 8: How and where to raise and address mitigation.

I think it was on this side of the table.

MS. BEIHN: Okay, I'll do it. Well, I think in this project we're on now, if I'm not mistaken, it's about -- it'll be in the third year that we'll do the mitigation. Right now we're doing the surveying and the scoping, all those sorts of things. And we're meeting, all of us are



getting together, our individual tribes and such and saying, you know, what should we do, what should we ask for in mitigation.

And we've got a lot of ideas, but it's not the right time to take it to the table yet. But we will be notified by the company when it's the right time, and that's when we will present that.

MODERATOR MILES: I want to make sure it says it was designed in a way that will address mitigation in a very effective way.

MS. BEIHN: Yes. Because early in the project some of our people wanted to address it right at the first couple of meetings, but yet we didn't have enough information. So we couldn't do that. We have to go out there and look at our sites and look at the water and look at all these things, and then say this is what we need to do for mitigation.

MODERATOR MILES: Make sure it's addressed at the right time, not too early, not too late.

Yes, Brett. Yes.

MR. JOSEPH: Yes, just a couple of points at issue. Obviously we have the same need, to have information before we address mitigation on the record. But I wanted to tie it in with this issue and with the early issue about cumulative impacts, because one thing

that we look at certainly in developing our recommendations and our mandatory prescriptions is how the impacts of a particular project fit in with relevant basin-wide planning.

If, for example, you have multiple projects in the same basin or there's other restoration activities or an ESA recovery plan, something like that, that's all relevant information for us in ensuring that what we come up with as mitigation for the particular project fits in with an overall scheme to more holistically improve the condition of the resources.

And we would encourage, and maybe we need to do more, I mean we just have recently set up tribal liaisons and so forth, but to better integrate the tribes in those planning processes early on, so that with better notification and early involvement in the FERC licensing process, more opportunities can be presented to also coordinate the particular FERC project licensing with larger efforts that may be underway.

The other point I wanted to make is that when we get to the point where we are prescribing either fishways or in the case of Interior it's the 4e condition, or the Forest Service, we have this process for obtaining input on the preliminary prescriptions that go in at the front end of the NEPA process, under our Mandatory Conditions Review

Process. And we want to try to carry forward that concept into the FERC rulemaking.

Again, it's another point where tribal input would be real crucial to us.

MODERATOR MILES: Okay. Examples of tribal successes. I think that's -- maybe that's a short way of saying examples of processes where tribal interest have been successfully addressed. Is that a fair way to say it?

No.

MS. BEIHN: Scratch that one out.

MODERATOR MILES: Jim.

MR. CANADAY: Jim Canaday, AC Water. Before you pull down and tape "Mitigation" on the wall, --

(Laughter.)

MR. CANADAY: -- given the baseline issue that -- of existing conditions is the baseline, how does one address some of the issues that the tribes have made here about past impacts to their resources? How do we get to that?

MS. BEIHN: That's a real good question because the licensees in our area do not like to discuss those effects, past effects, cumulative effects. Those are the ones we're having problems with them addressing. They don't want -- that wasn't our fault, we didn't make that decision. Oh, the Forest Service made that decision, gave

us the license, so now we get -- you know, it's too late, we can't address that.

But that does need to be addressed and we need to figure out where to go from here because, yes, they have affected it. They put the dam up, they moved the dirt, they moved a lot of sites, a lot of things have happened because of their project. And a couple of ideas we've come up with in mitigation ideas is signage complaining that we are not the past. We are here now and we will be here in the future and we would like a large display saying so and explaining the situation of that land and how that came about. And I think the licensee is responsible for doing that. They should do that.

And one of the licensees thinks that's a very good idea. The other isn't discussing it very well yet. But, you know, those are the kinds of things we're trying to come up with. We know we're not going to get it to go away. We have to have electricity. We have to have a dam. We have to have the water. What are we going to do about it now.

And I think our people are saying: What are going to give back to us for what you took away. You know, now's the time for you to tell us what you're going to do for us because you took that away from us. That's a huge issue. I just don't know where to go with it.

MR. CARDENAS: Yeah, I think that's important for us as well. These projects have been there since the teens and the '20s. 1920s and earlier than that. And back then you could do basically whatever you want and not have anything there, because PG&E -- or these utility companies controlled the state and Legislature and Governor's Office.

But I think times have changed, but we've never been compensated for those kind of things. And I think for all the things that she had mentioned as well as -- I think the Pit River Tribe is trying to address those issues if the idea of divestiture still explored, which our attorneys say it is. And so with the State or the PUC in trying to effect the divestiture or trying to have that mitigation at that time.

But as far as the FERC is concerned it's important, I think it needs to be discussed and looked at it, because these companies have been profiting for almost 90 years off our water, off our -- not just our water, but they've been profiting off our resources but never have we been compensated.

In fact, a lot of our allotments were, in my -- they were just taken, stolen. The land that was right along the river that they wanted, they just did whatever they had to do get it, and they still own it. So that's always been an issue of contention for us as far as trust.

There's no trust. We have absolutely no trust with this utility. And so how do we get past that?

MODERATOR MILES: Okay. Move onto Number 9:

Examples of processes or solutions that successfully addressed issues or interests raised by the tribes. Is that a fair way of saying what we're talking about?

Okay. I think we talked about earlier about keeping a library, some sort of record so that the tribes and others can use that as a guide and future processes. Is that what we're talking about? Daniel, I think you raised it.

MR. CARDENAS: Yeah, I think so. There probably are situations or projects that were successful. It's just that I would have -- me as just an individual, of course there is no way of knowing those situations -- knowing where there are successes. Maybe FERC does. And in terms of these regulations in doing this, reforming these licensing relations, FERC might have a better point of view is in terms of where tribes have been more successful than others.

MODERATOR MILES: Right. One of the things we talked about yesterday was that we might be able to come up with solutions that have been used in other parts of the country that could be used as for that particular project, but how do you share that information?

Yes.

MS. PATTISON: I was going to say you'd probably have more list of successes if you don't look at the entire relicensings but, rather, this relicensing was very successful in how it dealt with cultural resources. If you look for an entire success story, you're going to draw some blanks. Rather, each one has a tiny part to offer that's good. Put together it could give us a recipe, but I don't think we have a whole absolute success story yet.

MODERATOR MILES: All right. Anything else on Number 9?

MS. MESSERSCHMITT: I think that was part of what I brought up in that I said with IHC and with the NRG, you know did they look at successes, licensing projects that had gone well and tried to build their models for a new one based on those.

We have had successes with applicants. I mean it's not a case of in our area we have a good company and a bad company, it's not like that. We have pieces that need to be worked on for both applicants. But the bottom line is we do have things that work, and we should be able to share those with other tribal governments so that they could benefit from what works for us. And that's why Lu threw out the tribal liaison, because it works very, very well.

And going, trying to mitigate problems when the applicant isn't willing to get these other support agencies in and say, you know, give us a hand, let's rethink this and see how can we approach this, to get some help. So there are things that FERC could look at and say, okay, these work. You know, why do they work and how can we incorporate them.

MR. CARDENAS: And I think once the tribes are involved then they'll actually have -- you know, they feel like they have ownership. I think FERC and the rest of us will see that the process becomes better when the tribes feel as though they are a part of the process.

And one of the -- and then the ultimate -- I guess the ultimate process is what happened I guess in Oregon, I'm not sure which tribe, is it Grand Round, where they actually own -- I guess they are co-licensees or they own part of the project with Portland General. To me that's like the -- that's like the goal for my tribe. Is now once you become part of the owner of a project and the licensee, then you as a tribe have a responsibility to do all the things as well, not just the utility.

And so once we have worked to that point, where we actually have responsibility, then it's okay. But I think that's what we're trying to shoot for, and hopefully maybe other tribes are or not, but I think that that's a



goal that could be doable in the future. But to me that's a tribal success story.

MODERATOR MILES: Anything else?

Number 10: How to engage the right people in the process. We talked about how to characterize Number 10, but -- and we talked about that a little bit before, that if you're engaged in a process maybe you need to bring in some new people in order to get over that barrier, okay. That's been done before.

So any additional thoughts on that beyond what we talked about?

Brett.

MR. JOSEPH: Yeah, I have an additional thought there. I think this is an important issue. It's one that my agency's concerned about. In those cases where, for example, you're in settlement negotiations or a collaborative process, or it could be any licensing process, if you're running into roadblocks or you feel like either there's a clash of personalities or something is dysfunctional about the way the process is proceeding and that's becoming an obstacle just because of the people involved, I think we'd like to discuss with you, you know what's the best means to handle that.

Obviously to make the phone calls round, of what we've heard from a number of the tribes, in some cases is

that they don't know what the recourse is, who to call to overcome those kinds of hurdles. And of course for us it's a challenge because we have limited staff and so we may not always be able to have a team of people working on a particular project, so it's very important that the individuals involved are going to have good relations with their counterparts and the other -- in the tribes and the other entities.

But I just wanted to emphasize that that is important to us because that -- that's something that we could solve easily, I think, if we had some better communication when those kind of situations arise.

MODERATOR MILES: Yeah, that happens. I could tell you, I mean it happens on the NGO side, it happens in the state agency. If you have a large collaborative process, there's usually somebody in the room that's very difficult to get along with, but it's the role of a mediator to address that. I mean that's one of the roles.

Yes.

MR. CARDENAS: I think we're back to education of the parties. If we're negotiating or mediating, or whatever, with -- in an arbitration with these, you know, the utility, it would be helpful to know their structure, who this person -- and to know that you can do that. To know that not just complain about it or what can I do, but

to say, okay, well, this is a project manager and he obviously has a boss and so is it possible to go and bring our case to the project manager's boss and say, you know, this individual's hard to -- we just want to know whether what he's saying is the truth or not, and stuff like that. But throughout the process we're never told that we can do that or we can't do that.

And -- well, we're always told by the utility we can't do that, that's just the way it is, and you just got to deal with it. And so we're never told otherwise. And so I guess that's which -- what the other lady had mentioned regarding this box zero, is that all that should be out there on the table at that time, what we can or cannot do. Like a bill of rights or something. Something that says, you know, who we can turn to and who we can't and what the rules are for -- to play.

MODERATOR MILES: But you mentioned education, because one of the seven key elements to good, effective negotiation is relationships. And you have to be a little bit careful about, well, I may not have a good relationship with Tim, but I'm going to go around Tim. And that's not going to enhance our relationship. It may make it worse. So you've got to be real careful about how to address it, but it needs to be addressed. Otherwise a conflict will remain and you can't resolve a conflict by avoiding it.

Yes.

MS. MESSERSCHMITT: Rick?

MODERATOR MILES: Yes.

MS. MESSERSCHMITT: I think Daniel's right about expecting the tribal governments to play by the rules, but they don't know what they are. Sometimes you do have to go around somebody because, as you know, being the mediator, there are some people that just aren't going to budge. You know their answer is for you to be out. And you can't enlighten those people unless they have an out-of-body experience, which is rare.

So I think that we do need to have some options for when you get a licensee that doesn't want to -- isn't interested in improving relations, getting, as you said, a mediator. If that mediator is Agriculture or if that mediator is Interior or if that mediator is someone from FERC. You know we need to be able to have that venue and it needs to be structured. Not just -- I mean it would be, and I don't mean disrespect here, if you give me your card and you say, Cathy, you can call me here's my number.

And then I start having a problem. And I said, well, okay, I have Rich's number, I'll call him. Well, I get Rich's secretary.

MODERATOR MILES: No.

MS. MESSERSCHMITT: And then -- no, I'm -- I'm

just saying I might get somebody else to go to somebody else.

MODERATOR MILES: You get an answering machine because I travel all the time.

MS. MESSERSCHMITT: With a lot of these agencies, you don't get -- you get somebody's secretary or somebody's voicemail or somebody's assistant. And that assistant is on holiday, so they refer you to this assistant, who's not in the office. And you don't get anywhere. It's an exercise in frustration. So that does need to be in there.

MODERATOR MILES: Let me make an observation. There is an individual who's my counterpart, for example, at the Department of Interior, Elena Gonzalez. And Elena and I have been working together on how to advance the very subject matter you talked about. So Elena has put in place, with the support of other agencies, a training program on how federal employees, from the different resource agencies, can be more collaborative, more facilitative. And they're going to take that around the country.

And so individuals from our agency will have an opportunity to take that too. And we're just trying to figure out how to expand it to include states and tribes, and things like that. But it's at the very embryonic stage, okay. But I mean it's a movement that it's moving,

but like it's going to take a while to get people to change the way they have done things for decades.

Yes, Ken.

MR. HOGAN: One of the recommendations that we got when we went to the states in our 401 CZM workshops that Tim talked about earlier, the State of Washington recommended that we have a training meeting for everybody, so that -- it wouldn't just be FERC describing FERC's process to all the stakeholders and tribes and states, and everybody, but each individual state or tribe or agency would describe what their role would be in the process. And then everybody would be coordinated on the same page at the beginning of the licensing process per project.

Is that something that people think would be valuable?

MR. CARDENAS: I think it would be valuable at the beginning of the project. Because this was -- for instance, our chairman two years ago was requesting from the project manager of this relicensing project to do an -- I'm not sure if it's the bald eagle or golden eagle survey, to do a study on this eagle which was important to our culture. And the project manager, it's a big guy, and said, no, no, no. Up and down, no. But never any reason why no, just no. And so that issue just died.

And without knowing who the right people to talk

to or whether we could have appealed that and said it's very important to us and we need this eagle study, this bald eagle study, it just -- the study never got done. And so we're two years farther down the process. And so things like that, that had we the information like he had mentioned, or we had known what to do, then it would have resolved itself. It would have had a better resolution then what's happening.

MODERATOR MILES: Brett.

MR. JOSEPH: Yeah. On the point raised by Ken and yours, Dan, it brings up to me the point about establishing the relationships between parties or really knowing who it is you're working with and whether you can work with them. And that's why I raised the question earlier about the California proposal regarding at what point would they contemplate a decision where the parties would elect to go the ALP process. Because one of the -- the balance needs to be struck.

Obviously if the parties are going to go into an alternative process or pursue settlement negotiations, or anything that requires a higher level of collaboration, you don't want to wait till late in the process to make that decision. You don't want to be reversing course mid-stream. But at the same time if it's right at the front end, you haven't worked with each other enough to know

whether you can work with each other. You haven't established a relationship.

So I would support -- I mean it's already come up as a suggestion, but things like training in group problemsolving, whether it's formal or just having initial meeting with the introductions and so forth. That kind of thing at least gets you beyond that point where you're having to make a decision whether to commit a lot of resources to a process that depends on you working together, and you don't even know whether you can.

MS. BEIHN: And, Daniel, you're -- the process you're talking about, it finally gets to the point where you have the environmental impact statement and you have to have a period of time for comments and such.

In fact, we just sent in a comment about the eagles. And it was mentioned, but there was no details. Oh, yes, you know, the licensee will protect the eagles. Well, how are you going to do that. Let us know what you're going to do. Your timelines, what are your plans, you know. That wasn't in there. And so that was -- our comment was what are going to do them.

Our comment is cc'ed to FERC and to SHPO so everybody knows, we'll all know what we're talking about. And that's real important, to make sure everybody stays in the loop, make sure they know what our issues are. Because



we've asked to do these comments, let's do them. Make sure that they have our comments and they're entered into the EIS so that, yes, they can't come back later and said, well, the tribe's never said anything about the eagles. You know, we're just going -- we just figured we'd just do this.

Well, no, we did say, and we want -- we do want an answer.

MR. CARDENAS: Because I think within our tribe, the unfortunate part is I'm here today, my tribe sort of has given up. You know we've given up because of who we're dealing with, the individuals in the company, and we've just given up. So we're not at the table anymore and these kind of issues are not being discussed. And so these projects have already gone almost to the end without any sort of dialogue between the tribe.

And that's the unfortunate part because we -- because we are busy, but it's -- it's more than that because we have hit this brick wall without any sort of somebody saying, well, you can do this or that. And any sort of guidance, we just said, they're just going to do no matter what, so we're not even going to bother.

And that's the unfortunate part because our issues are not there and they're not going to be with this -- with these Pit relicensing. All of them -- all of them,

so.

MS. BEIHN: In our area the situation is that we came in at the tail end because it was recognized that the tribes did not have enough input and such, and everything, so then we were brought back in.

Then we paid attention, like what's going on. But now we're like a thorn in their side and we're being treated like that, too, and it's the company you're talking about. It's the same thing. Now it's happening up north and it's happening in central California. Somebody needs to pay attention.

And I like your comment about where do we go, who do we go to and who do we address about this situation. We need to address that situation if it's happening all over in their license area. We need to do something about that.

And we're just learning. The only reason I know is because I'm working with the SCE project. I'm a volunteer doing the other project and a bunch of other ones, because if you know what's going on you have to be there to speak for your people. That's just all there is to it. You're almost forced to out of obligations.

MR. BLAIR: Okay. To synopsise what Brett has suggested was that what normally carries the communications, or what Daniel had just said, they tossed in the towel, if you had some kind of training, you knew

who to go to, then perhaps you wouldn't adopt the fait accompli that you can't participate in the game, so to speak. Is that right?

MR. CARDENAS: Um-hum.

MS. BEIHN: And that is being the liaison for the Edison Company, see, I have those contacts now. And my people know that and they'll call me. They'll say, Lu, you know this is happening and they won't respond and what do I do.

Well, you call this person. If you don't get results from that person, you call this person. And there's a big, a long chain of command starting with the Big Creek Project Manager, all the way up to the top. And that's what they need to know, but they don't have that because they're not at every meeting. They're not involved. They don't have the big books and they don't have all that with the information.

In then we did a workshop where everybody was invited. They got presentations on the shovel probes and all sorts of things that they didn't know about that are going on with the relicensing, so that they would know and be able to keep up to date on things.

And they know they can call me any time of day for whatever reason they want. I mean, is Edison giving us lunch today. You know, I mean it doesn't matter. I should

know that because I'm supposed to be responsible for my people. And if I don't know that I will find out. I will call them back and find out, okay. But you need that liaison. You know, you really do. Obviously these tribes need that liaison to be the connection for them. That's the communication right there.

If you're seriously wanting communication, now I know who to go to for FERC. I know who -- we have meetings with SHPO. I feel close enough to them to just tell them anything that's on my mind, but how do you get to that point? See, you have to use somebody that is able to work with their people and with the agencies and bring that together. And what is our goal, what do we to accomplish here, and go from there, and try to work that together. Mesh it together and, see, let's get this thing done. And let's work on it hard, and everybody comes out a winner.

MR. BLAIR: Ann Miles had a comment, I believe?

No.

All right. We heard on the communication barriers, that if we have training in communications, we have some person appointed as a liaison, that maybe we won't be in a position where the tribe just gives up, that they continue into the process.

MR. McKINNEY: I'd like to add something to that, too.

Jim McKinney, Resources Agency. I think this loops back to the resources issue and the financial reimbursement that may or may not be available, because a good consultant or a good FERC attorney would really help make sure that certain issues were addressed.

And also I mean the FERC relicensing is very complicated. This rulemaking is very complicated. You know we're scrambling at the state side to make sure that we're really engaged in it. So it does take resources and time, but I think the money thing comes up here again.

MS. BEIHN: As does definitions.

MS. MESSERSCHMITT: So everybody speaks the same language and understands when you use a word, that it's the right -- everybody understands that, that language, and they have a grasp of the definition of it.

MS. BEIHN: Which reminds me real quick, the little survey of questions that came out, it was a two-page from FERC, that wanted to have comments today. You know if I would have had to do that I would have had to have a dictionary, because even working on the project I didn't know what was being asked for. And I thought, no, no, I'm not going to do this. You lose your audience that way.

MODERATOR MILES: All right. Our last topic: How to balance time and how to come up with good timelines? Right. Let's see if we can't try to get this done in the

next three to five minutes.

Okay. Any thoughts, comments?

MS. MESSERSCHMITT: I think when you have hard and fast timelines with no give, no room for, like Lu said, delays I don't know how you can balance. Balance requires all sides to be equal, and I don't believe that that's where anybody's at.

MODERATOR MILES: So if you have timelines and if there are to be expectations, you might want to lay out some guidelines on what qualifies as an exception.

You know, drought. Somebody mentioned -- who was it? Somebody mentioned yesterday or today, what happens if you have a two-year study and you really have the worst drought in a hundred years.

Yeah, Brett.

MR. JOSEPH: Yeah. That's -- well, hear that concern, I just want to kind of give it the context of what you see in the IHC Proposal. And you had raised the question before, that we haven't really communicated where it's coming from. You know, what was the genesis and so forth.

I mean Bob, his presentation went through some of the background, but one of the big issues, and this may be mostly from the perspective of inside the beltway, Washington, D.C., is streamlining and how to -- how to

shorten the timelines because of concerns about avoidable delays.

And so the timelines that you see in the flowchart an effort to make sure that all the steps that need to occur occur within the five-year timeline that is provided for. I mean it's a lot that has to be done in five years. And of course we have a six-and-a-half-year proposal on the table.

But it was not -- by putting in those timelines, it was not intended that those would be, you know, and granted, that they would be adhered to, but that for a number of reasons, and this came up yesterday, that there would be flex in there where it's appropriate, where having some flexibility in the schedule will not just cause delay, but will cause a better outcome.

But what -- I guess what I'm particularly interested in hearing is how that works for the tribes, because I heard a strong message in the initial statements that even with some flex, that given the other things we've been talking about, money, resources, you know, outreach, all of what we have been talking about, that the timelines added on top of that present a particular problem for the tribes.

So I don't know whether it's -- and we've had some good solutions. Box zero, as Malka keeps bringing up.

How to kind of get in early and in an appropriate way with the tribes so that when we get to those timelines, because realistically I'm not sure that at the end of the day with the national role and with kind of the political pressure to try to streamline and the legitimate reasons, you know, aside from some of what we've been talking about, to try to avoid delays that have occurred in other processes, that we can expect to end up with a process that's going to be open-ended and, you know, much more than six and a half years.

MR. CARDENAS: I think how we deal with that is, like I said -- had just suggested earlier, whether it happens or not is instead of having 50-year licenses --

MR. JOSEPH: Yeah.

MR. CARDENAS: You know, when I drive I only have a five-year license and limit the time -- since we've already shown or shown that the utilities, it's not coming out of their pockets, it's coming out of the ratepayers, our rates go up a penny or two, but it's coming out of the ratepayers, not the utility. So if we had a process that was shorter -- I mean a shorter license, 15-year license rather than 50-year license, then if we miss it the first time, then -- even though there's going to be impacts and there's going to be losses, we still have time the next go-around to deal with it, or the ability to amend. And that



was -- I forget to mention that before.

Is the stuff that's going on now, if these regulations change in the next two years, or whatever, what happens to the licenses that are approved between now and then?

Are they stuck in -- are there no changes to them because they are grandfathered in or is there an ability to go back and say, okay, things have changed, like they had mentioned, a drought, things have changed with the information, so we need to go back and make amendments or new requirements, or lessen requirements on the utilities after a couple of years. But if it's a 50-year license with no changes, then that's where we're going to have a lot of problem.

MODERATOR MILES: Okay. It's 10 of 4:00. And what we'd like to do is take the last 10 minutes and tell you what the next steps are and to ask you a question.

If you take a look at the back of the blue book, okay, as you can see, there will be in Washington a stakeholder meeting on what we heard and where we are going on December 10th. And then on the 11th and 12th there will be a drafting session that's open to all.

And following that, the staff with the assistance of federal resource agencies will start to draft a NOPR. And then hopefully a NOPR will come out in the last

Commission meeting in February. I mean those are the next steps.

And I think -- Ann, did you have a question that you wanted to ask about --

MS. MILES: No. I just wanted to make sure everyone knew that the notice for these drafting sessions is on the website right now at -- so -- do all of you in the room have computer access?

MS. PATTISON: We're against the wall.

MS. MILES: Oh, you're still off.

Do you have computer access? Okay. Because at [www.FERC.gov](http://www.FERC.gov), and then you can go to the hydro site. And there is an actual webpage that deals with this rulemaking, this process. So you can monitor that for what's going on.

And the thing that's on there right now is a notice that explains the drafting sessions.

And, Tim, you may want to go into in a little more detail.

And then it gives you the opportunity to sign up. So if you have any ability to come to Washington for those, --

MS. BEIHN: I don't think so.

MS. MILES: -- it would -- I mean you may not, but maybe someone --

MS. BEIHN: I'd be lucky to get to Oregon.

MS. MILES: -- could come as from the California tribes, I don't know, but if you do, it would be a wonderful thing I think.

And then the next real big opportunity will come after the NOPR issued, we'll be coming back out to the regions to have some other sessions to discuss this notice of proposed rulemaking, the draft of the rule, before it's finalized.

MS. MESSERSCHMITT: That's here, Ann?

MS. MILES: That is in the --

MS. MESSERSCHMITT: In the three regions?

MS. MILES: Yeah. March to April.

And also, you know, we may have the ability. We have sort of guessed at where it might be important for us to go for this second group of regional meetings, if you all feel like we must come to California, let us know that, because we have the possibility to maybe add something else.

MR. WELCH: Just a little bit more on the stakeholder meetings that are coming up in December that Ann mentioned. If you look at the notice, the meeting that's on the 10th of December, the post-forum stakeholder meeting, that's going to be a wrap-up of all the public forums that we've been to, both public and tribal throughout the country as well as a wrap-up of all the

written comments that we've received.

That particular meeting, you'll be able to view that through the internet, and there's instruction and notice on how to do that.

The post-forum stakeholder drafting sessions in the next two days, because they'll be sort of spread out because they're splitting into small groups to work on small parts of the process, they will not be broadcast over the internet.

As Ann mentioned, if you'd like to come to those, there's a sign-up process on the website, where you choose the particular group that you would like to join to work on a particular part of the process.

MODERATOR MILES: Okay.

MR. McKINNEY: I just have a --

MODERATOR MILES: Yes.

MR. McKINNEY: Let's see, in regards to the Capitol Connection website, where you can view the FERC proceedings through a webcast, we found that is invaluable. It's not completely user friendly, so give yourself some time to set it up.

Ask for a government rate as well, because we are able to give that.

Also one thing that we had learned from the last Washington, D.C. forum was that there were several tribal

representatives from the Pacific Northwest, the Midwest, and the New England area who all seem to be able to get to Washington, D.C. I don't have my notes with me. Perhaps FERC staff could make those names and contact information available to the California tribes.

And, lastly, I'd like to say that the State of California is interested in consulting further with the California tribes on the proposal we have out on the table. You all seem to know Jim Canaday, so feel free to work through him.

(Laughter.)

MR. McKINNEY: Pardon me if you want to try something different.

And also within the Resources Agency is the Native American Heritage Commission. Larry Myers is the director. He and I have been talking. I've been getting him up to speed on these issues. So feel free to work through him as well.

MODERATOR MILES: Anything else?

MR. CANADAY: Just a quick question on the schedule. Ann, these regional stakeholders, they're March or April. When will you kind of firm those dates up?

Because we're going to try to send someone to the Portland, if those are the only three, but we kind of have to at least pick a month when we go for out-of-state

travel. It's difficult to do that.

MS. MILES: When do you think we'll have that?

MR. WELCH: I think we should probably have that done by the end of the year. I mean soon.

MR. CANADAY: Okay.

MR. WELCH: We're trying to get through these next two meetings but, yeah, that's good Jim. I know people have to make plans and we have to work around spring breaks, that kind of thing.

MODERATOR MILES: Brett.

MR. JOSEPH: Yeah. I just want to say I just met our newest tribal liaison for the Southwest Region, and unfortunately I don't have that name, but I will get it for you.

I think -- I would kind of echo what California said about encouraging -- you know, the part of this person's role is to assist with this process. That could be a point of contact for you, so I'll get that name for you.

MR. CARDENAS: I think that's important. What FERC's, you know, how your structure operates, but I've worked with the Bonneville Power Administration, and we're like right on the southern edge of their boundaries.

And they have these Indian -- they have an Indian office or desk. And they have -- and, I don't know, if all

of them are Indian, but at least the employees that deal with Indian tribes, they're the other liaisons or the contacts, they're there for the tribe's questions and problems or issues with the BPA. And their responsibility is in their government-to-government consultation. So maybe FERC might need to look into something like that, at least on a national level so that we at least know who would be able to answer our questions easily.

MODERATOR MILES: Okay. Yes.

MS. MESSERSCHMITT: One more, please, Rich. That way my analytical mind can go to sleep tonight. With each one of these proposals, including the State Proposal, there was not an evaluation section at the end. And in my opinion when you go through any kind of process, whether it's scientific, administrative, what-have-you, you need an evaluation process, in other words, to see if your baby lived or died.

I would like to see that in some -- you know, somewhere. I think it would be beneficial in the long run for this whole process, otherwise you guys are just spinning your wheels if you don't know what your product's going to be.

MS. BEIHN: Where does it go from here with these proposals? I mean are -- I thought it was already a done deal, but is this going to be submitted and one's going to

be chosen or what --

MR. WELCH: No. We're not going to --

MS. BEIHN: What's the deal here?

(Laughter.)

MR. WELCH: Well, what's probably -- what we will be doing in the stakeholder drafting sessions is each -- there will be different groups of people working on this and various aspects of each process will be sort of laid out with a series of questions about should it be this or should it be that. And we're hoping that we can get some more input from people. Because eventually, when FERC staff and the agencies sit down, we're going to have to go through and just all -- pick them all out together.

And the idea here is to pick the best of the best. The best part of this one, the best part of this one, the best part of this one. And you come up with the super process. I mean that's the goal, the best of the best.

MS. SMITH: We're at the very beginning. No where near the middle or the end. The very beginning.

MR. WELCH: Yes.

MS. BEIHN: That's nice to know.

MR. JOSEPH: Except that it's a hundred-yard dash rather than a walk.

(Laughter.)



MODERATOR MILES: With that last comment, thank you all -- oh, yes.

MS. BEIHN: I just would like to thank all of you for being here and answering our questions and listening to us. And I'm hoping that you heard us, because it's real important. We don't -- you know, generally we go to a meeting and we feel it out to see if we're really going to be taken seriously or not because our time is really valuable, but I really feel like this was productive, and I appreciate that. I just wanted to tell all of you thank you.

MODERATOR MILES: On behalf of FERC and the other federal agencies and the state agencies, we want to thank you for the courtesy and the cooperation you have extended to us. Thank you very much.

This meeting is closed.

(Whereupon, at 4:00: o'clock p.m. the forum was concluded.)

## CERTIFICATE OF OFFICIAL REPORTER

This is to certify that the attached proceedings  
before the FEDERAL ENERGY REGULATORY COMMISSION in the  
Matter of:

Name of Proceeding: HYDROELECTRIC LICENSE REGULATIONS

Docket No.: RM02-16-000

Place: SACRAMENTO, CALIFORNIA

Date: WEDNESDAY, NOVEMBER 20, 2002

were held as herein appears, and that this is the original  
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